IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.12.2018

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE
C.M.A.Nos.3344 & 3345 of 2013
and
C.M.P.Nos.1 & 1 of 2013

C.M.A.No.3344 of 2013

The New India Assurance Co. Ltd.,
Arcot Woodlands Complex,
Bharathi Road,
Cuddalore. ... Appellant/2nd Respondent

Vs

1.Chitra Priya

2.Arun Ganesh ... Respondents 1&2/Petitioners

3.P.Mohan ... 3rd Respondent/1st Respondent

4.D.Thamarai Selvan ... 4th Respondent/3rd Respondent

5.United India Insurance Company Limited,
Cuddalore. ... 5th Respondent/4th Respondent

PRAYER : Civil Miscellaneous Appeal filed against the Judgment and Decree dated 30.03.2012, made in MCOP.No.2598 of 2009 on the file of Motor Accident Claims Tribunal (Principal District Court), Cuddalore.

For Appellant : Mr.S.Manohar

For Respondents : Mr.M.Sudarson
for Mr.N.Damodaran

C.M.A.No.3345 of 2013

The New India Assurance Co. Ltd.,
Arcot Woodlands Complex,
Bharathi Road,
Cuddalore. ... Appellant/2nd Respondent

Vs

1.Chitra Priya

2.Arun Ganesh .. Respondents 1 & 2/Petitioners

3.P.Mohan .. 3rd Respondent/1st Respondent

4.D.Thamarai Selvan .. 4th Respondent/3rd Respondent

5.United India Insurance Company Limited,
Cuddalore. .. 5th Respondent/4th Respondent

PRAYER : Civil Miscellaneous Appeal filed against the Judgment and Decree dated 30.03.2012, made in MCOP.No.2599 of 2009 on the file of Motor Accident Claims Tribunal (Principal District Court), Cuddalore.

For Appellant : Mr.S.Manohar

For Respondents : Mr.M.Sudarson
for Mr.N.Damodaran

C O M M O N J U D G M E N T

(Judgment of the Court was delivered by N.KIRUBAKARAN, J)

C.M.A.No.3344 of 2013

The appeal has been preferred by the Insurance Company against the award of Rs.18,55,800/- for the death of one Mrs.Aruna, who was a B.T. Assistant in Municipal Higher Secondary School, Cuddalore, aged about 42 years, earning Rs.17,721/- per month in the accident occurred on 05.10.2008 when the deceased along with others were travelling in a Fiat car from Cuddalore to Chennai, which was hit behind by a van, insured with the appellant/insurance company, driven rashly and negligently. Therefore, the claim petition.

2.After contest, the Tribunal found that the accident occurred because of the rash and negligent driving of the van as well as car and fixed the liability in the ratio of 50:50 and determined the monthly income at Rs.17,721/-, as per Ex.P.14/Pay Certificate and applied multiplier “13”. The Tribunal took the age of the deceased as 50 years, as per Ex.P.4-Post mortem certificate and determined the loss of income and awarded compensation of Rs.18,55,800/- along with other headings. The said award is being challenged before this Court on the question of quantum.

3.Heard Mr.S.Manohar, learned counsel appearing for the appellant and Mr.S.Sudarson, learned counsel appearing for the respondents.

4.There is no dispute with regard to the liability as Mr.S.Manohar, learned counsel appearing on behalf of the appellant submits that the Tribunal rightly fixed the liability in the ratio of 50:50, on the driver of the van as well as the driver of the car. Though Mr.S.Manohar, learned counsel appearing on behalf of the appellant would find fault with the award amount, it is evident from the records that the Tribunal did not add anything towards future prospects, as per the Constitution Bench's judgment of the Honourable Apex Court in National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC). It is proved by Ex.P.9-School certificate of the deceased that the deceased was aged about 42 years. When there is credible evidence available to prove the age of the deceased, the Tribunal should have relied upon the said document. Therefore, this Court redetermines the age of the deceased as 42 years, instead of 50 years. If 42 is taken as age of the deceased, appropriate multiplier as per the judgment of the Honourable Supreme Court in Sarla Verma & Others .Vs. Delhi Transport Corporation & another, reported in 2009 (2) TNMAC 1 (SC), is 14. The deceased was earning about Rs.17,720/-, working as BT Assistant in a Government School as proved by Ex.P.14. Since the age of the deceased was 42 years, the appropriate future prospects to be added as per Pranay Sethi's judgment is 30%. If 30% is added, the monthly income would be at Rs.23,037/- (Rs.17,721/- + Rs.5,316/-). After applying "14" as multiplier, the loss of income would be at Rs.38,70,216/- (Rs.23,037/- x 12 x 14). From the above, 10% has to be deducted towards income tax. If 10% is deducted, loss of income would be at Rs.34,83,194/-.

5.The size of the family is two. As per the judgment of the Honourable Supreme Court in Sarla Verma & Others .Vs. Delhi Transport Corporation & another, reported in 2009 (2) TNMAC 1 (SC), 1/3rd has to be deducted towards personal expenses. After deducting 1/3rd towards personal expenses, total loss of income would be at Rs.23,22,129/- (Rs.34,83,194/- (-) 1/3rd (34,83,194/-))

6.Love and affection:

Since the children alone are the claimants, a sum of Rs.10,000/- awarded by the Tribunal is negligible and the same is enhanced to Rs.40,000/- each to respondents 1 and 2/claimants.

7.Funeral expenses:

The Tribunal awarded a sum of Rs.2,500/- under this head. The same is enhanced to Rs.15,000/-.

8.Loss of estate:

No amount was awarded by the Tribunal, under this head. Hence, this Court awards a sum of Rs.15,000/- under this head.

9.Transportation:

The Tribunal awarded a sum of Rs.2,500/- under this head. The same is enhanced to Rs.10,000/-.

Head	Amount (Rs.)
Total loss of income	2322129
Loss of love and affection	80000
Funeral expenses	15000
Loss of estate	15000
Transportation charges	10000
Total	2442129

10.Hence, the total compensation payable in this case is Rs.24,42,129/-, rounded off to Rs.24,42,000/-.

11.CMA.No.3345 of 2013

The appeal has been preferred by the Insurance Company against the award of Rs.22,79,240/- for the death of the father of respondents 1 & 2/claimants viz., Mr.Gunasekaran, aged about 53 years, Junior Engineer working in Highways Department, earning about Rs.25,737/- per month in the accident which occurred on 05.10.2008, when he and his family members were travelling in a car from Cuddalore to Chennai, which was hit by a van, insured with the appellant/Insurance Company driven rashly and negligently, causing the accident.

12.On contest, the Tribunal found that the driver of the car as well as van are equally responsible and fixed the liability at the ratio of 50:50 and awarded a sum of Rs.22,79,240/- to be paid equally by the appellant as well as by the insurance company of the car viz., 5th respondent.

13.Mr.S.Manohar, learned counsel appearing for the appellant would submit that the amount of compensation awarded by the Tribunal is on the higher side. Even though the Tribunal fixed the ratio at 50:50 on the driver of the van as well as the car, it was proved before the Tribunal that the deceased was working as Junior Engineer and was earning Rs.25,737/- as per Ex.P.8. No amount was awarded towards future prospects. It was proved by Ex.P.12/SSLC mark sheet that the deceased was aged 53 years. If the age of the deceased is 53 years, as per the Constitution

Bench's judgment of the Honourable Apex Court in National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC) 15% has to be added towards future prospects. Therefore, after adding 15% towards future prospects, the monthly income would be at Rs.29,597/- (Rs.25,737/- + 15% of Rs.25,737/-).

14.The appropriate multiplier as per the judgment of the Honourable Supreme Court in Sarla Verma & Others .Vs. Delhi Transport Corporation & another, reported in 2009 (2) TNMAC 1 (SC), is "11". However, the Tribunal has wrongly taken "13" as multiplier. The right multiplier is "11". Therefore, the loss of income would be at Rs.39,06,804/- (Rs.29,597/-x12x11). From this 10% has to be deducted towards income tax. After deducting 10%, the loss of income would be at Rs.35,16,124/-.

15.The size of the family is two. Therefore, 1/3rd has to be deducted towards personal expenses. After deducting 1/3rd towards personal expenses, the total loss of income would be at Rs.23,44,082/- [Rs.35,16,124/- (-)1/3 of Rs.35,16,124/-].

16.Love and affection:

The Tribunal awarded a sum of Rs.10,000/- under this head and the same is enhanced to Rs.40,000/- each to respondents 1 and 2/claimants.

17.Funeral expenses:

The Tribunal awarded a sum of Rs.2,500/- under this head. The same is enhanced to Rs.15,000/-.

18.Loss of estate:

No amount was awarded by the Tribunal, under this head. Hence, this Court awards a sum of Rs.15,000/- under this head.

19.Transportation:

The Tribunal awarded a sum of Rs.2,500/- under this head. The same is enhanced to Rs.10,000/-.

Head	Amount (Rs.)
Total loss of income	2344082
Loss of love and affection	80000
Funeral expenses	15000
Loss of estate	15000
Transportation charges	10000
Total	2464082

20.Hence, the total compensation payable in this case is Rs.24,64,082/- rounded off to Rs.24,64,000/-.

21.CMA.Nos.3344 and 3345 of 2013

Since the liability has been fixed at 50:50, the appellant is directed to pay 50% of the enhanced compensation amount, in the respective appeals and the 5th respondent/Insurance company of the car is also directed to pay 50% of the enhanced compensation amount in the respective appeals.

22.The interest awarded by the Tribunal at the rate of 6% per annum is enhanced to 7.5% per annum. Since interest at the rate of 7.5% is awarded, the question of awarding interest for the default period does not arise.

23.Even though in these appeals the owner of the car as well as the insurance company viz., United India Insurance Company have been made as parties and they have been served and their names are shown in the cause list, they have not appeared. United India Insurance Company is a public sector insurance company and such a company is negligent in protecting the interest of the insurance company and there is failure in its duty. Therefore, Rs.1,00,000/- (Rupees one lakh only) is awarded as costs payable by the United India Insurance Company. The United India Insurance Company is directed to conduct an enquiry and find out, who was negligent in protecting the interest of the insurance company, in appointing panel counsel before this Court in this case and the said cost has to be recovered from the said officer, from his salary and file a report before this Court within a period of twelve weeks from the date of receipt of a copy of this order.

24.The respective claimants are directed to pay the requisite court-fee, if any, within a period of two weeks from the date of receipt of a copy of this order, failing which the amount enhanced would not accrue to them.

25.The appellant and the 5th respondent/Insurance company are directed to deposit the entire award amount, in the respective appeals, in the ratio of 50:50 along with interest and costs as per the modified award passed by this Court, within a period of six weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any. On such deposit being made, the Tribunal is directed to transfer respective shares of respective claimants, along with interest and costs to their personal bank accounts through RTGS within a period of one week thereon.

26.Accordingly, CMA.No.3344 of 2013 is dismissed, enhancing the award of the Tribunal from Rs.18,55,800/- to Rs.24,42,000/- with interest and CMA.No.3345 of 2013 is also dismissed, enhancing the award of the Tribunal from Rs.22,79,240/- to Rs.24,64,000/- with interest. Consequently, connected miscellaneous petitions are closed. No costs.

For reporting compliance, call the matter after 16 weeks.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

sai

To
The Principal District Judge,
Motor Accident Claims Tribunal, Cuddalore.

Copy To: The Section Officer,
V.R.Section, High Court, Madras.

+1 cc to Mr.N.Damodaran, Advocate, Sr.No. 83501
+1 cc to Mr.S.Manohar, Advocate, Sr.No. 83534

C.M.A.Nos.3344 & 3345 of 2013

EV(CO)
CSL/14.06.2019