IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.06.2018

CORAM

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
AND
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY
C.M.A.No.2196 of 2016

1. V.Muthumanikkam
2. Bakkiyam
3. M.Kumaran @ Muthukumaran
4. Chakravarthy ..Appellants/Petitioner

Vs.

1. Smt. Siby Bosewall
   Propretior Bentex Industries.

2. The Branch Manager,
   United India Insurance Company Ltd.,
   Branch Office, 2nd Floor, Vedakkanethil Towers,
   Private Bus Stand Road, Perumbavoor – 683 542.
   Kerala State. ..Respondents/Respondents

Prayer:
Civil Miscellaneous Appeal as against the judgment and decree dated 23.07.2013 passed by the Motor Accidents Claims Tribunal (Special District Court), Salem, in M.C.O.P. No. 57/2009.

For Appellant :: Mrs.R.T. Sundari for Mr.M.P. Jayaprakash

For Respondents:: Mr.A. Dhiraviyanathan for R2
R1 Exparte before Trial Court

J U D G M E N T

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

This Civil Miscellaneous Appeal has been preferred by the claimants aggrieved over the quantum of compensation of Rs.4,52,000/- awarded as compensation by the Motor Accidents Claims Tribunal (Special District Court), Salem in M.C.O.P.No. 57 of 2009 by order dated 23.07.2013, for the death of one Muthurathinam, aged about 26 years, manufacturer of silver ornaments and a dealer of Chettinad Cement, allegedly earning about Rs.30,000/- per month, in the accident, which occurred on 05.10.2006, when the victim, who was riding a two-wheeler, was hit down by a lorry, belonging to the 1st respondent and insured with the 2nd respondent, driven rashly and negligently.

2. Heard Mrs.R.T. Sundari, learned counsel for the appellants and Mr.A. Dhiraviyanathan, learned counsel for the 2nd respondent.

3. Since there is no appeal by the Insurance Company, the only question to be decided is with regard to the quantum of compensation.

4. Learned counsel for the appellants would point out that the Tribunal, in spite of the income tax returns filed on behalf of the appellants, as Ex-P5, showing the income of the victim as Rs.1,11,136/-, during 2008-2009, erroneously took Rs.6000/- as the monthly income and deducted one-third towards " Personal Expenses" and adopted multiplier 9, as per the age of the parents. Therefore, she seeks enhancement of the award amount.

5. On the otherhand, learned counsel for the 2nd respondent Insurance Company supported the award of the Tribunal and opposed any enhancement.

6. The claimants are said to have filed the income tax returns pertaining to the deceased from 2006-2007 onwards. The last return filed was for the year 2008-2009, marked as Ex-P5, wherein the annual income was shown as Rs.1,19,936/-. When the deceased himself had stated before the Income Tax Authorities, as proved by Ex-P5 that his annual income was Rs.1,19,936/-, for the year 2008-2009, before the date of his death, namely, 05.10.2008, the Tribunal should have determined the said amount as his annual income. Therefore, the fixation of Rs.6000/- as notional income is set aside and Rs.1,19,936/- is taken as the annual income of the deceased and therefore, the monthly income would be, Rs.9,994/-. The Future Prospects of the deceased, who was aged about 26years, was not taken into consideration by the Tribunal. 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 ACJ 2700, 40% requires to be added towards " Future Prospects". Adding 40% to the monthly income determined at Rs.9,994/-, the " total monthly income" comes to,

Monthly Income	::	Rs.9,994/-
Add: 40% towards Future Prospects	::	Rs.9,994/- + 40% (Rs.9,994/-)
Total Monthly Income	::	Rs.13,991/-

Though the deceased was a bachelor, the Tribunal erroneously deducted one-third towards " Personal Expenses" instead of 50%. Therefore, deducting 50% towards " Personal Expenses", the " Monthly Contribution of the deceased" comes to,

Total Monthly Income	::	Rs.13,991/-
Less:50% towards "Personal Expenses"	::	Rs.13,991/-- 50% (Rs.13,991/-)
Monthly Contribution	::	Rs.6,995/-
Annual Contribution	::	Rs.6,995 x 12

7. As far as the choice of multiplier is concerned, the Tribunal committed an error by adopting multiplier 9, based on the age of the parents of the deceased when as per settled position of law, by the Honourable Apex Court, the multiplier has to be chosen based on the age of the deceased. The age of the deceased was 26years, at the time of accident, as proved by Ex-P2, postmortem certificate and the appropriate multiplier is 17. Applying the said multiplier, " Loss of Income" comes to,

Loss of Income	::	Rs.6995 x 12 x 17
	::	Rs.14,26,980/-

8. A sum of Rs.10,000/- has been awarded towards " Loss of Love and Affection" to the appellants and the same is enhanced to Rs.50,000/-. This enhancement is made in spite of stiff opposition by Mr.A. Dhiraviyanathan, learned counsel for the 2nd rspondent Insurance Company, citing the decision of the Division Bench of this Court rendered in Royal Sundaram Alliance Insurance Company Limited V. Suganthi reported in 2018 (1) TN MAC 599 (DB), which followed the judgment of the Constitution Bench of the Honourable Apex Court in Pranay Sethi's case. This Court has already pointed out that the Constitution Bench's judgment of the Honourable Apex Court in Pranay Sethis' case did not prohibit awarding of any amount towards " Loss of Love and Affection". In fact, the amount awarded towards " Loss of love and Affection" is akin to the amount awarded towards ' Loss of Consortium' to the spouse. No one can deny the fact that on account of death of one's son/sibling, there would be loss of love and affection and in that event, this Court has to necessarily award amount towards "Loss of Love and Affection". Therefore, a sum of Rs.50,000/- is awarded towards " Loss of Love and Affection".

9. The Tribunal has awarded Rs.10,000/- towards "Funeral expenses" and the same is enhanced to Rs.15,000/-. Further, a sum of Rs.15,000/- is awarded towards "Loss of Estate" and a sum of Rs.10,000/- is awarded towards " Transportation Expenses". The total compensation payable to the claimants comes to Rs.15,16,980/-. The rate of interest awarded by the Tribunal @

7.5% per annum remains intact. The 1st and 2nd appellants are entitled to Rs.5 lakhs each and the remaining amount has to be shared equally by the 3rd and 4th appellants.

10. The 2nd respondent Insurance Company is directed to deposit the entire amount, as per the modified award, passed by this Court, with interest and cost, before the Tribunal, after deducting the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this order and on such deposit being made, the Tribunal is directed to transfer the respective shares of the appellants to their respective bank accounts, through RTGS, within a period of one week thereon. The appellants shall pay additional court-fee for the enhanced amount, if any.

11. In fine, the Civil Miscellaneous Appeal is partly allowed enhancing the compensation awarded by the Tribunal from Rs.4,52,000/- to Rs.15,16,980/- with interest @ 7.5% per annum. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

nv

To

1. The Special District Judge,
Motor Accidents Claims Tribunal, Salem.

2. The Section Officer,
VR Section, High Court, Madras-104 (2 Copies)

+1cc to Mr.R.Margabandhu, Advocate, S.R.No.38017

+1cc to Mr.A. Dhiraviyanathan, Advocate in sr.37762 (15.11.18)

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kk(co)
cs/16/10/2018