IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.04.2018

CORAM :

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

and

THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

CMA No.2197 of 2016

1.Vijayasanthi
2.Minor Omisa
3.Minor Abhirami
(Appellants 2 and 3 are rep.
By next friend and mother 1st Appellant)
4.Chanthra ...Appellants

vs.

1.S.Sathiaseelan,

2.National Insurance Co.Ltd, Branch-3,
Thanthai periyar Market Complex,
Govindasamy Pillai Street, Salem-1. ...Respondents

Prayer :- Civil Miscellaneous Appeal as against the judgment and decree dated 18.06.2013 passed in M.C.O.P. No. 2364 of 2010 by the Motor Accidents Claims Tribunal, (Special District Judge), Salem.

For Appellants : Mr.C.Kulanthaivel

For 2nd Respondent : Mr.D.Baskaran

JUDGMENT

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

The appeal has been preferred by the claimants against the award of Rs.6,92,000/- for the death of one Ravi @ Ravi Varma, aged about 42 years, partner in a private company, allegedly earning about Rs.50,000/- per month, in the accident which occurred on 14.08.2010, when he was alighting from the bus in the bus stand, the bus suddenly moved and the victim sustained head injuries and died.

2.Heard, Mr.C.Kulanthaivel, learned counsel appearing for the appellants and Mr.D.Baskaran, learned counsel appearing for the second respondent.

3.The only question to be decided is with regard to the quantum of compensation since, the 2nd respondent/insurance company has not filed any appeal against the finding regarding liability.

4.Though it was proved by the claimants that the deceased was doing many business including being a partner in Annamalai Car Jewelery, Pondicherry and doing Auto Consulting business by producing execute partnership deals and filed Income Tax returns as Ex.P10 to P15 and Trade Certificate as Ex.P17, the tribunal did not believe those documents and took notional income of Rs.6,000/- only as his annual income. The tribunal rejected the Income tax returns filed by the deceased, observing that the returns are self-assessment. The approach of the tribunal is erroneous. When a person declares his income and pays appropriate income tax to the Department, as per the provision available in the income tax department, necessarily, the same has to be believed. Exs.P11 to P15 are Income tax returns filed for the years from 2006-2007 to 2009-2010. Though different amounts have been shown as the income of the deceased in the income tax returns filed during the aforesaid years, the last return filed by the deceased pertains to the year 2009-2010, which is marked as Ex-P15, as per which, the last declared income is Rs.2,19,600/-. Therefore, the said amount has to be taken as the yearly income of the deceased.

5.The contention of Mr.D.Baskaran, learned counsel appearing for the second respondent, challenging the income tax returns is liable to be rejected, as the income tax department already accepted the said returns. Therefore, this Court determines the yearly income of the deceased as Rs.2,19,600/-.

6.As per the Constitution Bench's Judgment of the Honourable Apex Court rendered in National Insurance Company Limited V. Pranay Sethi and others reported in 2017 ACJ 2700, 25% has to be added towards "Future Prospects" as the deceased was self-employed and aged about 42 years. If 25% of the income is added along with yearly income of Rs.2,19,600/-, then total annual income would be Rs.2,74,500/-.

7.If Rs.2,74,500/- is determined as yearly income, then the taxable income would be Rs.1,14,500/-, as the said amount is over and above the exemption limit of Rs.1,60,000/-, at the relevant point of time. For Rs.1,14,500/-10% deduction has to be made towards income tax, which would be Rs.11,450/- After deduction of income tax at 10%, the yearly income would be (Rs. 2,74,500/- (-) Rs. 11,450/-) Rs.2,63,050/-.

8.The size of the family of the deceased is four and therefore ¼th has to be deducted towards personal expenses of the deceased as per Sarla Verma's case (2009 (2) TN MAC Page 1). After deduction of ¼th towards "personal expenses" of the deceased, "Annual Contribution of the deceased to his family" would be,

Total Income	::	Rs.2,63,050/-
Less: One-fourth towards "Personal Expenses"	::	Rs.2,63,050 (-) ¼(Rs.2,63,050/-)
Annual Contribution	::	Rs.1,97,287.5

9.The age of the deceased was 42years and as per the Judgment in Sarla Verma's case (2009 (2) TN MAC page 1), the appropriate multiplier would be 14. Applying the same, "Loss of Income" would be,

Loss of Income	::	Rs.1,97,287.5 x 14
	::	Rs.27,62,025/-

10.No amount was awarded towards "loss of consortium". Therefore as per the Constitution Bench's judgment of the Honourable Apex Court in Pranay Sethi's case (2017 ACJ 2700), a sum of Rs.40,000/- is awarded. Rs.1,00,000/- is awarded towards loss of love and affection to appellants 2 to 4 is restricted only to the minor children namely appellants 2 and 3 and for the 4th appellant, a sum of Rs.25,000/- is awarded towards "Loss of love and affection". Rs.10,000/-, awarded towards "funeral expenses" is confirmed and Rs.15,000/- is awarded towards "Loss of Estate". Further, a sum of Rs. 10,000/- is awarded towards "Transport Expenses" as no amount was awarded by the Tribunal under the said head. Hence, the total compensation payable to the appellants comes to,

Loss of Income	::	Rs.27,62,025/-
Loss of love and affection	::	Rs. 1,25,000/-
Funeral Expenses	::	Rs. 10,000/-
Transport Expenses	::	Rs. 10,000/-
Loss of Estate	::	Rs. 15,000/-
Loss of Consortium	::	Rs. 40,000/-
Total	::	Rs.29,62,025/-
rounded off to		Rs.29,50,000/-

12.The second appellant was aged about 11 years in 2010 and now she would have attained majority and therefore this Court declares her majority. Out of the award amount of Rs.29,50,000/-, the first appellant/widow would be entitled to a sum of Rs.11,00,000/-, the second and the third appellants would be each entitled Rs.8,00,000/- and the fourth appellant/mother of the deceased would be entitled to Rs.2,50,000/-. The rate of interest awarded by the tribunal @ 7.5% per annum is confirmed. The appellants are directed to pay additional Court fee for the enhanced amount, if any, within two weeks from the date of receipt of a copy of this order before this Court.

13. The 2nd respondent Insurance Company is directed to deposit the entire award amount along with interest and cost, as per the modified award passed by this Court, before the Tribunal, after deducting amounts, already deposited, if any, within a period of four weeks from the date of the receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the respective shares of the major appellants along with proportionate interest to their respective Bank Accounts of the appellants through RTGS, within a period of one week thereon. The share of the 3rd appellant/minor is directed to be deposited in interest bearing fixed deposit in any one of the Nationalized Banks, till he attains majority. The first appellant mother is permitted to withdraw the accrued interest thereon once in three months. The appellants are directed to give the details of their bank account before the Tribunal. It is made clear that the appellants would not be entitled to any interest for the delay period of 343 days in preferring the appeal.

14. In the result, Civil Miscellaneous Appeal is partly allowed enhancing the compensation awarded by the Tribunal from Rs. 6,92,000/- to Rs. 29,50,000/-. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

The Special District Judge,
The MACT (Special District Court), Salem.

+1c to Mr.C.Kulanthaivel, Advocate Sr.26370
+1cc to Mr.D.Bhaskaran, Advocate Sr.26728

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srg 11/06/2018