IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 02.04.2018
CORAM
THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN
AND
THE HONOURABLE MR. JUSTICE R. PONGIAPPAN
C.M.A. No. 2366 of 2016

1. Mrs. Senthamizh
2. Mr.Arjunan ..Appellants/Petitioners

Vs.

1. M/s. Parveen Travels (P) Ltd.,
Old No.6, New No.39, Uma complex,
Medavakkam Tank Road,
Chennai - 600 010.

2. The New India Assurance Co. Limited,
No. 46, Moore Street,
Chennai - 600 001.

(The 1st respondent ex parte in Lower Court, hence notice may be dispensed with) ..Respondents/Respondents

Prayer: Civil Miscellaneous Appeal as against the decree and judgment dated 12.10.2015 passed in M.C.O.P. No. 681 of 2012 by the Motor Accidents Claims Tribunal (II Additional District Court), Poonamallee.

For Appellant :: Mr.K. Varadha Kamaraj
For Respondents:: R1 - ex parte
No appearance for R2

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 challenging the quantum of compensation awarded by the Motor Accidents Claims Tribunal (II Additional District Court), Poonamallee, to the tune of Rs.14,41,500/- in M.C.O.P. No. 681 of 2012, by order dated 12.10.2015. The appellants herein are the dependents of one Kavitha, aged about 31 years, working as Junior Assistant in Repco Bank Limited and alleged to be earning about Rs.18,000/- per month, who died in the accident, which occurred on 30.05.2012, when she was travelling in a Scooty bearing Registration No. TN-20-AA-0731 as a pillion rider, which was hit down by a Private Omni bus bearing Registration No. TN-01-AK-5841, coming in the opposite direction, driven in a rash and negligent manner.

2. Heard Mr.K. Varadha Kamaraj, learned counsel for th appellants. The 1st respondent remained ex parte even before the Tribunal and therefore, no notice was taken to the 1st respondent. Though notice was served on the 2nd respondent Insurance Company and their name is also printed in the cause list, there is no appearance on their behalf. Hence, this Court, based on the available records and after hearing the learned counsel for the appellants, proceeds to decide the matter on merits.

3. The deceased, by name, Kavitha, travelled as a pillion rider in the Scooty, which was hit down by an Omni bus and the same is proved by Ex-P1, FIR, Ex-P3, Charge Sheet and Ex-P4, Rough Sketch and further fortified by the evidence of P.W.2, who was an eye-witness to the occurrence. Therefore, the Tribunal rightly came to the conclusion that the accident occurred because of the rash and negligent driving of the Omni bus. Further, there was no rebuttal evidence, concerning this aspect, on the part of the respondents even before the Tribunal. Therefore, the finding of the Tribunal, regarding negligence, is confirmed. In any event, there is no appeal by the respondent Insurance Company as against the said finding.

4. Now coming to the question of quantum, with regard to the income of the deceased, by marking Ex-P10, Salary Certificate, it was adduced before the Tribunal that the deceased was drawing a sum of Rs. 15,355/-. Though the deceased died as a spinster, the Tribunal erroneously deducted only one-third towards "Personal Expenses" . Eventhough there is no appeal by the Insurance Company, in view of the settled position of law, 50% is required to be deducted towards "Personal Expenses" of the deceased, as she was a spinster. Further, as rightly contended by the learned counsel for the appellants, "Future Prospects" have not been included to the income of the deceased, who was aged only 31 years. Right from the judgment rendered in Sarla Verma V. Delhi Transport Corporation reported in 2009 ACJ 1298 (SC) up till the recent judgment of the Constitution Bench of the Honourable Apex Court in National Insurance Company V. Pranay Sethi & Others reported in 2017 ACJ 2700, 50% of the actual salary has to be added to the income of the deceased towards "Future Prospects" if the deceased had a permanent job and was aged below 40 years. In this case, as proved by Ex-P5, Death Certificate and Ex-P2, Postmortem Certificate, the age of the deceased was rightly determined by the Tribunal as 31 years. Therefore, 50% of the actual salary has to be added to the income of the deceased towards "Future Prospects".

5. The monthly income of the deceased, as evident from Ex-P10,Salary Certificate, is Rs.15,355/- and as stated above, if

50% is added towards "Future Prospects", then the total income of the deceased would be,

Monthly Income	::	Rs.15,355/-
Add: 50% towards "Future Prospects"	::	Rs.15,355 + 50% (Rs.15,355/-)
Total Monthly Income	::	Rs.23,032.50
Annual Income	::	Rs.23,032.50 x 12
	::	Rs.2,76,390/-

At the relevant point of time, the tax exemption limit was upto Rs.2 lakhs and therefore, for the balance sum of Rs.76,390/-, 10% has to be deducted towards income tax. After deducting, the "Annual Income" of the deceased would be,

Total Annual Income	::	Rs.2,76,390/-
Less: Income Tax @ 10% on Rs.76,390/-	::(-)	Rs. 7,639/-
	::	Rs.2,68,751/-

As already observed, the Tribunal erroneously deducted one-third towards "Personal Expenses" instead of 50% since the deceased died as a spinster. Therefore, deducting 50% towards "Personal Expenses", the "Annual Contribution of the deceased to her family" would be,

Annual Income	::	Rs.2,68,751/-
Less: 50% towards "Personal Expenses "	::	Rs.2,68,751/-(-)50% (Rs.2,68,751/-)
Annual Contribution	::	Rs.1,34,375.50

As per Sarla Verma's judgment, the appropriate multiplier to be adopted for the age of 31 years is 16 and therefore, applying the said multiplier, the "Loss of Income" works out to,

Loss of Income	:;	Rs.1,34,375.50 x 16
	::	Rs.21,50,008/-

6. As per the Constitution Bench's judgment of the Honourable Apex Court cited supra, no amount could be awarded towards "Loss of Love and Affection". Hence, the amount awarded under the said head by the Tribunal is set aside. As far as other conventional heads, namely, "Funeral Expenses' and "Loss of Estate" are concerned, the sum of Rs.15,000/- awarded by the Tribunal towards "Funeral Expenses" is confirmed and a sum of Rs.15,000/- is awarded towards "Loss of Estate". Hence, the total compensation payable to the appellants is as hereunder:

Loss of Income	::	Rs.21,50,008/-
Funeral Expenses	::	Rs. 15,000/-
Loss of Estate	::	Rs. 15,000/-
Total	::	Rs.21,80,008/-

Each of the appellants would be entitled to equal share in the award amount. The rate of interest awarded by the Tribunal @ 7.5% per annum remains unaltered.

7. The 2nd respondent Insurance Company is directed to deposit the entire award amount, as per the modified award passed by this Court, along with interest and costs, before the Tribunal, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal shall transfer the award amount to the respective bank accounts of the appellants, as per the ratio fixed by this Court, through RTGS, within a period of one week thereafter.

8. In the result, the Civil Miscellaneous Appeal is partly allowed enhancing the amount awarded by the Tribunal from Rs. 14,41,500/- to 21,80,008/-. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To
The Motor Accident Claims Tribunal
The II Addl. District Court,
Poonamallee.

Copy to:The Section officer
VR Section,
High Court, Madras

+1cc to Mr.K.Varadha Kamaraj, Advocate Sr.No.24239

RSY(CO)
sm:24.4.2018