IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.04.2018

CORAM

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
AND
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

C.M.A.No.243 of 2016
&
C.M.P.No.1940 of 2016

Bharati AXA General Insurance Co. Ltd.,
1st Floor, Ferns Icon, Survey No.28,
Doddanakundi Village,
K.R. Puram, Hobli, Bangalore -37.
..Appellant/2nd Respondent

Vs.

1. Elamathi
2. Minor Karunya
3. Minor Akshaya
(Minors 2 and 3 represented by their mother and next friend Elamathi)
4. Rajappan
5. Ponni .. Respondent 1 to 5/Petitioners 1 to 5
6. Mohammed Arif ..6th Respondents/1st Respondent

Prayer: Civil Miscellaneous Appeal as against the judgment and decree dated 29.09.2015 passed in M.C.O.P. No. 939 of 2013 by the Motor Accidents Claims Tribunal (Special District Judge), Krishnagiri.

For Appellant :: Mr.Srinivasan Ramalingam

For Respondents:: Mr.Mukund R.Pandiyan for R1 to R5

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J U D G M E N T
(Judgment of the Court was delivered by N. KIRUBAKARAN,J.)

This Civil Miscellaneous Appeal has been filed by the Insurance Company as against the award of Rs. 34,74,000/- as compensation to respondents 1 to 5 for the death of 1st respondent's husband, namely, Murugan, aged about 36 years, Ex-Service man, and working as Jamedar in a Co-operative Sugar mill, earning about Rs.14,620/-, apart from pension to the tune of Rs.4775/- from Indian Army, in the accident which occurred on 31.05.2013, when he was riding a two-wheeler, which was hit down by a Innova Car insured with the appellant Insurance Company, driven rashly and negligently.

2. Mr.Srinivasan Ramalingam, learned counsel for the appellant Insurance Company would submit that there was negligence on the part of the two-wheeler rider, as he went on the wrong side and dashed against the Innova Car coming in the opposite direction inviting the accident resulting in his death. He would also submit that apart from Army Pension, the deceased was only drawing a sum of Rs.14,000/- per month and there are no promotional prospects as adduced by the employer of the deceased. Therefore, 50% added towards "Future Prospects" has to be set aside. He would further submit that even 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), the amount under the conventional headings has to be restricted to Rs.70,000/-. Therefore, he seeks to set aside the award.

3. On the other hand, Mr.Mukund R. Pandiyan, learned counsel for the claimants would support the award passed by the Tribunal.

4. The accident on 31.05.2013 is admitted. Learned counsel for the appellant relied upon the rough sketch Ex-R1 to contend that the deceased alone was negligent and that he invited the accident. As rightly found by the Tribunal, Ex-P1 - FIR & Ex-P8 - charge sheet have been filed against the driver of the car. Secondly, P.W.2, who is an eye-witness, categorically deposed that the accident occurred because of the rash and negligent driving of the car insured with the appellant Insurance Company. The driver of the offending vehicle namely, the car was not examined. Even the author of the sketch, a policeman, was not examined. Moreover, the person, who had drawn the sketch was not an eye-witness and he came after sometime and thereafter only, he had drawn the sketch. Even that person had not been examined. A representative/officer from the appellant Insurance Company, who was not an eye witness alone was examined. For the above reasons, the Tribunal rightly came to the conclusion that the accident occurred because of the rash and negligent driving of the car and rejected the contention of the appellant in the absence of any credible rebuttal evidence.

5. It is proved through documents that the deceased was an army pensioner drawing a sum of Rs. 9,459/- through salary certificate Ex-C1. It is proved that the deceased was earning about Rs.14,000/- through Ex-P6, being the salary bill of May,

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2013 of the deceased, showing Rs.14,620.22/- as the salary. However, the Tribunal wrongly took Rs.12,825/- after deducting Rs.2,215/- including EPF. The amount towards EPF is the contribution made equally by the employer and the employee. Therefore, the said amount has to be paid to the deceased only. Therefore, deduction of Rs.1,426/- from the salary has to be omitted. The amount after deduction is Rs.12,405/- and Rs.1,426/-, the deduction towards EPF has to be added, which would make the income of the deceased as Rs.13,831/-. Apart from 50% of the contribution made by the employee, 50% has to be contributed by the employer as well. Therefore, another sum of Rs.1426/- has to be added to arrive at the correct monthly salary. Adding the the above amounts, the monthly salary of the deceased would be Rs.15,257/-. Therefore, alongwith 50% " Future Prospects", the monthly salary would be (Rs.15,257/- (+) 50% of Rs.15,257/-)

Monthly Income = Rs.22,885/-
The yearly income would be Rs.22,885 x 12 = Rs.2,74,620/-

6. At the relevant point of time, as per the income tax rates applicable, the exemption limit was upto Rs.2 lakhs and therefore, for the balance sum of Rs.74,620/- , 10% has to be deducted towards income-tax payable. Therefore, calculating the same, the total annual income, after income tax deduction, comes to,

Annual Income :: Rs.2,74,620/-
LESS: 10% on Rs.74,620/-

Towards income tax :: Rs. 7,462/-

Total Annual Income :: Rs.2,67,158/-

Since size of the family is four, one-fourth deduction has to be made towards "Personal Expenses". Then, the "Annual Contribution of the deceased to his family" would be,

Total annual income :: Rs.2,67,158/-
Less: One-fourth towards

"Personal Expenses" :: Rs.2,67,158 - ¼ (Rs.2,67,158/-)

:: Rs.2,00,368/-

Monthly Contribution:: Rs.2,00,368 /12

:: Rs.16,697/-

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50% of family pension from the army per month is Rs.4729.50. Therefore, "Total Monthly Contribution of the deceased to his family" would be,

:: RS.16,697 + 4729.50
:: Rs.21,426.50

7. As per the postmortem certificate, the age of the deceased was rightly determined at 36years. The appropriate multiplier, as per Sarla Verma's case (2009 6 SCC 121), namely, 15, was rightly applied by the Tribunal. Accordingly, applying the same, the " Loss of Income" would be,

Loss of Income :: Rs.21,426.50 x 12 x 15
:: Rs.38,56,770/-

As per the Constitution Bench's judgment of the Honourable Supreme Court, under the conventional heads, only Rs.70,000/- has to be awarded ie.., Rs.40,000/- towards " Loss of Consortium", Rs.15,000/- towards " Funeral Expenses" and Rs.15,000/- towards " Loss of Estate", Mr.Srinivasan Ramalingam, learned counsel for the appellant would submit. Accordingly, Rs.25,000/- awarded towards "Funeral Expenses" and Rs.1 lakh awarded towards "Loss of Consortium" to the 1st respondent are reduced to Rs.15,000/- and Rs.40,000/- respectively. However, Rs. 1lakh awarded towards " Loss of love and affection" to respondents 2 to 5 is enhanced to Rs.1,50,000/-, ie., Rs.50,000/- each to respondents 2 and 3 and Rs.25,000/- each to respondents 4 and 5.

8. Though it is contended on behalf of the appellant that the Honourable Supreme Court in the judgment rendered in Pranay Sethi's case (2017 ACJ 2700), did not award any amount towards "Loss of love and affection", " Loss of love and affection" is akin to " Loss of Consortium" since "Consortium" is nothing but, love and affection, care, companionship, moral support, enjoyed by the spouses and for the loss of which, compensation is granted to the wife or husband, as the case may be. Therefore, by loss of a parent, in this case, the father, that too, at a very young age of 2 years and 5 years, the 2nd and 3rd respondents have been deprived of their father's love, affection, care and guidance. Therefore, the Honourable Supreme Court would not have meant that there cannot be any grant of amount towards " Loss of love and affection" to the children as well as the parents of the deceased, especially, when the wife is granted amount towards "Loss of Consortium". No amount was awarded towards " Loss of Estate" . Hence, a sum of Rs.15,000/- is awarded under the said head. Hence, the total compensation payable is,

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Loss of Income	::	Rs.38,56,770/-
Loss of Consortium	::	Rs. 40,000/-
Funeral Expenses	::	Rs. 15,000/-
Loss of Estate	::	Rs. 15,000/-
Loss of Love and Affection	::	Rs. 1,50,000/-
Total	::	Rs.40,76,770/-

The rate of interest awarded by the Tribunal @ 7.5% per annum remains unaltered.

9. Eventhough the appeal has been preferred by the Insurance Company, taking into consideration, the correct amounts, since the Tribunal erroneously deducted even the EPF amount, this Court, invoking Order XLI Rule 33 CPC and Section 151 CPC and Article 227 of the Constitution of India, this Court, even in the absence of appeal/cross-appeal, has enhanced the compensation from Rs.34,74,000/- to 40,76,770/-, rounded off to Rs.40,80,000/-. What is required to be awarded is only just compensation and it cannot be exorbitant or a meager amount. The power of this Court to enhance the compensation, even in the absence of appeal/cross-appeal has been recognized by the Honourable Supreme Court in Nagappa V. Gurdayal Singh reported in 2004 (2) TN MAC 398 (SC).

10. This Court apportions the award amount in the following manner:

Out of the said sum of Rs.40,80,000/-, the 1st respondent/wife would be entitled to Rs.12 lakhs; the 2nd and 3rd respondents/minors would be entitled to Rs. 11 lakhs each and respondents 4 and 5/parents of the deceased would be entitled to Rs.3,40,000/- each.

11. The appellant Insurance Company is directed to deposit the entire award amount, as per the modified award passed by this Court, 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 is directed to transfer the respective shares of the major claimants, as per the apportionment made by this Court, to their respective bank accounts, through RTGS, within a period of two weeks thereafter. The respective shares of the minor claimants shall be deposited in any one of the Nationalised Banks, in interest bearing Fixed Deposit, till they attain majority. The 1st respondent, being the mother of the minor claimants would be entitled to withdraw the interest accruing on such deposit, three months once.

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12. The claimants shall pay additional court-fee on the enhanced amount, if any.

13. In the result, the Civil Miscellaneous Appeal is dismissed. No costs. Connected C.M.P. is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

nv

To

1. The MACT (Special District Court),
Krishnagiri.

Copy To
The Section Officer,
VR Section, High Court,
Madras-104.

+1cc to Mr.Srinivasan Ramalingam, Advocate, S.R.No.25800
+1cc to Mr.Mukund R.Pandiyan, Advocate, S.R.No.25876

C.M.A.No.243 of 2016

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