IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.04.2018

CORAM :

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

C.M.A.Nos.2655 and 2844 of 2015
and
M.P.No.1 of 2015

C.M.A.No.2655 of 2015

Royal Sundaram Alliance Insurance Co. Ltd.,
No.8/H1, Mangalam Building, 4 Road,
Salem 636 009. ..Appellant/2nd Respondent

Vs

1.Chinthamani

2.Ramasamy ..Respondents 1 &2 /Petitioners

3.C.Ranganathan ...3rd Respondent/1st Respondent
(3rd respondent remained exparte)

PRAYER :
Civil Miscellaneous Appeal filed against the Judgment and decree made in M.C.O.P.No.1157 of 2013 on the file of the Motor Accidents Claims Tribunal (Motor Accident Claims Judge, Additional District Judge) at Namakkal dated 30.04.2015.

For Appellant :Mr.M.Krishnamoorthy

For Respondents :Mr.M.Logesh (for R1 and R2)
for Mr.Ma.P.Thangavel

R3 - set exparte

C.M.A.No.2844 of 2015

1.Chinthamani

2.Ramasamy ...Appellants/Petitioners

Vs

1.C.Ranganathan

2.Royal Sundaram Alliance Insurance Company Ltd.,
... Respondents/Respondents

PRAYER :

Civil Miscellaneous Appeal filed to enhance the compensation awarded in the Judgment and Decree dated 30.04.2015 made in M.C.O.P.No.1157 of 2013 on the file of MACT/Additional District Court at Namakkal.

For Appellants : Mr.M.Logesh
for Mr.Ma.P.Thangavel

For Respondents : Mr.M.Krishnamoorthy (for R2)

R1 - Exparte

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

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

These appeals have been preferred against the award passed by the Tribunal, awarding a sum of Rs.20,69,000/-. Both the insurance company as well as claimant are before this Court. The claimants/parents filed CMA.No.2844 of 2015 and the Insurance company filed CMA.No.2655 of 2015.

2.For the sake of convenience hereinafter, the appellant in C.M.A. No.2655 of 2015 would be referred as insurance company and the appellants in C.M.A. No.2844/2015 would be referred as claimants.

3.The victim, Karthikeyan was travelling in Bolero car along with others, which was driven rashly and negligently, resulting in falling of the car in a pit, which resulted in death of Karthikeyan on 14.11.2012. Therefore, the claim petition.

4.The Tribunal based on Ex.P.1 - FIR, Ex.P.5 - charge sheet filed against the driver of the Bolero car and based on PW2, eyewitness evidence came to the conclusion that the car was driven rashly and negligently and because of that the victim died.

5.Though the insurance company took a plea that more number of persons than the permitted limit, travelled in the car, a perusal of the records would show that neither there is a pleading in the counter affidavit nor there is any rebuttal evidence adduced on behalf of the insurance company. Therefore, the Tribunal was right in concluding that the Bolero car was driven rashly and negligently and that is why the Tribunal's finding about the plea cannot be disturbed.

6.Mr.M.Krishnamoorthy, learned counsel appearing for the Insurance company would submit that the Tribunal fixed notional income of Rs.12,000/- for the deceased Engineer, which is on the higher side. He would further submit that course completion certificate alone was filed and there is nothing regarding merit of the victim, who was aged about 21 years, at the time of the accident. He would rely upon the judgment of the Honourable Supreme Court in S.Suresh Vs. Oriental Insurance Co. Ltd and another, reported in 2010 (1) TNMAC 253, to stress the point that only a sum of Rs.7,000/- was taken as monthly income by the Supreme Court, in a reported case filed under the Workmen's Compensation Act, in which the right leg of the lorry driver was amputated in the accident which occurred on 26.09.2002. The said judgment is not applicable to the facts of the case for the simple reason that the judgment has been given under the Workmen's Compensation Act and the injured person was a lorry driver, whereas in this case the deceased was an Engineer. That apart, the accident in that case occurred on 26.09.2002, whereas in this case, the accident occurred on 14.11.2012. Hence, the judgment will not be applicable to the facts of this case.

7.Mr.M.Krishnamoorthy, learned counsel appearing for the insurance company, relied upon the judgment of the Division Bench of this Court in United India Insurance Co. Ltd., Vs. P.Govindaraj and 3 others reported in (2010) 1 TN MAC 246, wherein for an Engineering graduate and a Honours Diploma Holder in National Institute of Information Technology, a sum of Rs.7,500/- was fixed as monthly income and therefore, he wants the said amount of Rs.7,500/- to be followed in this case. A perusal of the said judgment would reveal that the accident occurred on 08.10.2000, whereas in this case, the accident occurred on 14.11.2012, (ie.,) after 12 years. Much water had flown under the bridge between 2000 and 2012. Therefore, the said judgment is also not applicable to the facts of this case.

8.He further relied upon judgment rendered by one of us (Kirubakaran. J,) in New India Assurance Co. ltd., Vs. T.Chelladurai and others reported in 2009 (2) TNMAC 481, in which for a final year automobile engineering student, this Court fixed the monthly income at Rs.7,000/- and therefore, the learned counsel for the insurance company wants the same amount to be followed in this case. The said judgment would reveal that the accident occurred on 13.04.2006, whereas in this case, the accident occurred on 14.11.2012 and by that time, because of inflation everything got increased. Therefore, the said judgment cannot be followed.

9.Mr.Lokesh, learned counsel representing Mr.Ma.P.Thangavel, learned counsel for claimants would rely upon judgment of Division Bench of this Court in S.Saraswathy and another Vs. A.Elumalai and another reported in 2016 (2) TNMAC 424 wherein for a final year Engineering student, a sum of Rs.20,000/- was fixed as monthly income. He would further rely upon the judgment in National Insurance Company Limited Vs. Salma Farheen and others, reported in 2015 (2) TNMAC 341, in which for B.A., second year student, monthly income was fixed at Rs.15,000/- and in Sau.Sandiya and another Vs. Balaji and two others, reported in 2017 SCC Online Bom 7733, in which for the death of 1st year Civil Engineering student, a sum of Rs.20,000/- was fixed as monthly income. Therefore, he sought for enhancement of compensation.

10. As far as the judgment of this Court in 2016 (2) TNMAC 424 is concerned, even though the final year Engineering student died, this Court taking into consideration that the parents of the student were doing business and the deceased was holding shares in the company and received dividends on the shares and filed income tax returns and therefore the monthly income was fixed at Rs.20,000/-. Hence, the said judgment cannot be applied here. Taking into consideration the Division Bench judgment of this Court in Royal Sundaram Alliance Insurance Company Limited Vs. S.Lakshmi and two others reported in 2016 (1) TNMAC 490, which is almost similar to the facts of the present case, wherein the deceased was a 1st year B.E., student and a sum of Rs.15,000/- was determined as monthly income and the said accident occurred on 03.04.2013. whereas in this case, on 14.11.2012, the accident had occurred and the time gap is only a few months. Moreover, the deceased in this case also completed B.E., course, as evident from Ex.P.9 and P.10. A perusal of Ex.P.9 - Provisional Certificate would reveal that he was conferred first class B.E., Degree. Therefore, the deceased in this case, is more meritorious than the student, who died in the case reported in 2016 (1) TNMAC 490. However, taking into consideration that the accident had occurred at or about the same time, this Court follows the said judgment and determines the income at Rs.15,000/- per month. This Court is justified in fixing the monthly income at Rs.15,000/-, since the deceased is a first class Engineering Graduate.

11.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), 40% has to be added towards future prospects, if the deceased is self employed. Therefore, 40% has to be awarded towards future prospects. If 40% is added, monthly income would be Rs.21,000/- (Rs.15,000/- + 40% of Rs.15,000/-). Since the deceased was a bachelor, 50% has to be deducted towards personal expenses.

After deduction of 50%, monthly income would be at Rs.10,500/- (Rs.21,000/- (-) 50% of Rs.21,000). The deceased was aged about 21 years, as evident from Ex.P.2, post mortem certificate and therefore, appropriate multiplier is "18", which was rightly adopted by the Tribunal and therefore, loss of income would be Rs.22,68,000/- (Rs.10,500/- x 12 x 18).

12.Love and affection:

The Tribunal awarded a sum of Rs.1,00,000/- towards loss of love and affection to the claimants. Though Mr.M.Krishnamoorthy, learned counsel appearing for the Insurance Company argued that awarding of amount towards loss of love and affection is not found in 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), the said argument cannot be accepted for the simple reason that the Constitution Bench has awarded a sum of Rs.40,000/- towards loss of consortium to the wife/widow. Awarding amount towards consortium is akin to loss of love and affection to the parents or to the children. The claimants, who brought up their child with the fond hope that he would look after them properly in the evening of their life has to be compensated necessarily for loss of love and affection. The Honourable Supreme Court would not have meant that there cannot be any amount towards loss of love and affection. Therefore, Rs.1,00,000/- awarded by the Tribunal to the claimants together is upheld.

13.Funeral Expenses:

A sum of Rs.25,000/- was awarded by the Tribunal towards funeral expenses. 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), the same is reduced to Rs.15,000/-.

14.Loss of estate:

No amount was awarded towards loss of estate. 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), this Court awarded a sum of Rs.15,000/- towards loss of estate.

15.Transportation charges:

Even though no amount was awarded towards loss of estate, this Court awarded a sum of Rs.10,000/- towards transportation charges.

16.Hence the compensation awarded to the claimant comes to Rs.24,08,000/-, rounded off to Rs.24,00,000/-.

Head	Amount (Rs.)
Loss of Income	2268000
Loss of love and affection	100000
Funeral expenses	15000
Loss of estate	15000
Transportation charges	10000
	2408000

17.Therefore, the Tribunal's award of Rs.20,69,000/- is enhanced to Rs.24,00,000/-. The claimants are entitled to get share as per the ratio fixed by the Tribunal. The interest fixed by the Tribunal at 7.5% is unaltered. The claimants are directed to pay the requisite court-fee, if any, within a period of one week from the date of receipt of a copy of this order.

18.The insurance company is directed to deposit the entire award amount along with interest and costs within a period of four 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 the respective shares of the claimants along with proportionate interest and costs to their respective bank accounts through RTGS within a period of one week thereon.

19.Accordingly, CMA.No.2655 of 2015 is dismissed. CMA.No.2844 of 2015 is partly allowed, enhancing the award of the Tribunal from Rs.20,69,000/- to Rs.24,00,000/- with interest. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//
Sub Assistant Registrar

sai
To

The Additional District Judge
Motor Accidents Claims Tribunal
Namakkal

+1cc to Mr.Ma.P.Thangavel, Advocate, S.R.No.30457
+1cc to Mr.M.Krishnamoorthy, Advocate, S.R.No.30415

C.M.A.Nos.2655 and 2844 of 2015

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