IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.06.2018

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

and

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A.No.1880 of 2017
and CMP.No.2099 of 2018

1.S.Smitha

2.Minor Shivani
D/o.Late. Sabari Girishan
rep.by 1st petitioner as natural guardian

3.B.Thayammal

4.C.Balasubramanian ... Appellants/Claimants

Vs

1. S.Vijayakumar
(R1 remained exparte before Tribunal)

2. The Shriram General Insurance Company Limited
Thirumalai Pillai Road,
T.Nagar, Chennai - 17. ... Respondents/Respondents

PRAYER :

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, against the judgment and decree dated 05.04.2016 made in MACTOP No.772 of 2013 on the file of the Motor Accidents Claims Tribunal, II Additional District Judge at Poonamallee.

For Appellants : Mr.F.Terry Chella Raja
For Respondents : R1 set exparte
Mr.S.Dhakshinamoorthy for R2

J U D G M E N T

(Judgment of the Court was delivered by KRISHNAN RAMASAMY, J)

The appellants have preferred the present appeal, aggrieved by the order of the Motor Accident Claims Tribunal, Poonamallee in MCOP No.772 of 2013 dated 05.04.2016 against the award of Rs.18,22,320/-

2. Heard Mr. F.Terry Chella Raja, the learned counsel appearing for the appellants and Mr.S.Dakshinamoorthy, the learned counsel appearing for the second respondent.

3. The brief facts of the case are as follows:-

The deceased Sabari Girishan was riding in a motor cycle bearing registration No.TN-10-AH-7561 on 22.09.2013 at about 19:15 hrs at Ponnamalle to Vandalore New 400 feet ring road, near Kundrathur Ponniamman Kovil, from South to North, the first respondent's Maruthi Swift Car bearing registration No.TN-06-B-1530 came in opposite direction driven by the first respondent's driver in a rash and negligent manner and hit the deceased motor cycle which resulted to drag the deceased bike up to 100 metrs from the place of accident. The deceased sustained grievous injury and he died on the spot. FIR also filed by the police for rash and negligent driving of the first respondent's car driver. Under the above circumstances, the appellants herein filed the claim before the Motor Accident Claims Tribunal for a sum of Rs.60,00,000/- as compensation to compensate the death of the deceased due to the rash and negligent driving of the first respondent's car driver. The car was insured with the second respondent therefore the claim was made by the appellants against the respondents No.1 & 2 before the Motor Accident Claims Tribunal. The respondent in its counter statement denied all the claim and stated that the accident occurred due to the negligence of the deceased. After hearing both side, the Tribunal passed an award of Rs.18,22,320/- to the appellants herein. Aggrieved by the award passed by the Motor Accident Claims Tribunal the appellants herein preferred the present appeal on the following issues.

1. Whether the quantum of compensation fixed by the Tribunal is in accordance with the principles and guidelines made by the Hon'ble Supreme Court of India in the cases of Pranay Sethi and Sarla Varma?

2. To what compensation amount the claimants are entitled?

3.1.1. The present appeal preferred by the claimants on the issue of quantum alone. As per PW2 one Balakrishnan who is an eye witness stated that the car bearing registration No.TN-06-B-1530 hit the deceased motor cycle bearing registration No.TN-10-AH-7561 and consequently the car dragged the motor cycle to 100 meters away from the accident place. Further he stated that he has seen the rider of the motor cycle died on the spot. The wife of the deceased was examined as PW1. In order to substantiate the contention of the eye witness PW2 and the PW1, the Poonamalle Traffic Police also investigated and registered FIR which was marked as Ex.P1 stating that the accident was due to the rash and negligent driving on the part of the driver of the car. The second respondent failed to produce any document or evidence to substantiate that first respondent's driver was not responsible for the accident. At the time of accident the age of the deceased was 34 years and the post mortem report also states that the age of the deceased was 34 years and the same was marked as Ex.P4. Hence the Tribunal came to the conclusion that the age of the deceased was 34 years and we also confirm the same.

3.1.2. With regard to the income of the deceased, the claimants marked through PW1, Ex.P7 & Ex.P12 salary certificates, Ex.P10 deceased employment certificate, Ex.P.11 deceased appointment certificate and Ex.P13 deceased identity card. Further in the appeal through CMP No.2099 of 2018 in CMA No.1880 of 2017 the appellants filed Form-16 before the income tax department for the assessment years 2012-2013, 2013-2014 and 2014-2015. Since the ITR returns are statutory documents filed before Income Tax authorities for determination of taxable income and payment of tax, we permit the petitioners/appellants to file in this appeal and the same is marked as Ex.P.14. As per the return of income filed through Form-16, the income disclosed by the deceased to the income tax department are as follows:-

Financial years	2011 - 2012	2012 - 2013	2013 - 201 4
Gross salary	Rs.4,53,819/-	5,10,686/-	2,00,462/-
Less Conveyance allowance	Rs.9600/-	Rs.9,446/-	Rs.9,523/-
Less tax on employment	Rs.2196/-	Rs.2,566/-	-
Income chargeable under the head salaries	Rs.4,42,023/-	Rs.4,98,674/-	Rs.1,90,939/-

3.1.3. In the present case the deceased filed Form-16 for three financial years as stated above. Therefore we have no hesitation to take the income as mentioned in the return of income as shown in Form-16 as income of the deceased. In the last financial year i.e., 2013-2014 in Form-16 Gross salary of the deceased was shown as Rs.2,00,462/- for 113 days. Therefore, we will take the income shown in the latest available Form-16 as income of the deceased for 113 days which includes conveyance allowance. For the purpose of determining the compensation, we deduct conveyance allowance of the deceased. Since this allowance will be provided only if the deceased is alive and working, the deceased family is not entitled for this allowance. Therefore we deduct conveyance allowance of Rs.9,523/- from Gross salary. Hence income chargeable under the head salary of deceased is a sum of Rs.1,90,939/- (Rs.200462 - 9523) (for 113 days) and for one year it will be Rs.1,90,939/- x 365 / 113 = Rs.6,16,750/-. Since the deceased died at the age of 34 years, we add 50% towards future prospects as held by the Supreme Court of India in the case of National Insurance Company Limited Vs. Pranay Sethi reported in 2017-13 SCALE 12. Thus 50% of

Rs.6,16,750/- will be a sum of Rs.3,08,375/- is added to the salary of the deceased towards future prospects. Therefore, the income of the deceased along with future prospects will be a sum of Rs.9,25,125/-

3.1.4. In Form-16 filed for the financial year 2013-2014 it was shown a sum of Rs.72,290/- is eligible for deduction. Accordingly we deduct the same from income chargeable under the head "Salary". Hence we deduct the said sum of Rs.72,290/- from Rs.9,25,125/-. After the deduction, the gross taxable income will be a sum of Rs.8,52,835/-. From the said amount, we further deduct a sum of Rs.1,00,567/- towards tax amount of the deceased.

Calculation is as follows:-

Gross taxable income Rs.8,52,835/-. Out of the said amount, a sum of Rs.2,00,000/- is deducted. (Rs.8,52,835 - 2,00,000 = Rs.6,52,835/-)

Thereafter 10% tax will be chargeable from the income of Rs.3,00,000/- (Rs.2,00,000/- to Rs.5,00,000/-) which will be a sum of Rs.30,000/-. For the balance income of Rs.3,52,835/- [(i.e.,) Rs.5,00,000/- to Rs.8,52,835/-] 20% of the tax will be chargeable which will come around to Rs.70,567/-. Therefore the total tax amount of Rs.1,00,567/- is deducted from the pecuniary benefits eligible to the family of the deceased. Therefore the loss of income to the deceased family is Rs.8,24,558/- (Rs.9,25,125 - Rs.1,00,567). From this amount, we deduct 1/4th towards personal expenses of the deceased, as the number of dependants are four in the present case, as held in the case of Sarla Verma and others Vs.Delhi Transport Corporation and another reported in 2009 ACJ 1298 SC. Therefore, the loss of dependency is Rs.6,18,418/- (Rs.8,24,558 x ¾). As the age of the deceased was 34 years at the time of accident, by applying the multiplier 16 as held in Sarla Varma (cited supra) the total loss of income of the deceased will be a sum of Rs.98,94,688/- (Rs.6,18,418/-x 16). Therefore we fix a sum of Rs.98,94,688/- towards loss of dependency against the sum of Rs.14,95,320/- awarded by the Tribunal. The Tribunal awarded a sum of Rs.1,00,000/- towards loss of consortium. The Hon'ble Apex Court in the judgment of Pranay Sethi's case (cited supra) made clear that the maximum amount of consortium cannot be accepted more than Rs.40,000/-. Therefore, we re-fix the consortium as Rs.40,000/- from Rs.1,00,000/- Further the Tribunal awarded Rs.2,10,000/- towards loss of love and affection to appellants/petitioners 2 to 4 and we inclined to confirm the same as proportioned by the Tribunal. As no amount was awarded towards "Loss of estate" by the Tribunal, a sum of Rs.15,000/-. is fixed under that caption. Under the heads "Funeral expenses" and “Damages” this Court is inclined to confirm the amount of Rs.15,000/- & Rs.2,000/- respectively as awarded by the Tribunal.

3.1.5. Therefore, we decide that the quantum fixed by the Tribunal is not in accordance with the principles and guidelines laid down by the Hon'ble Supreme Court of India. Accordingly we answered the question No.1 as stated above.

3.2.1. The appellants are entitled for the compensation. Hence the total compensation payable is as follows:-

Head	Amount (Rs.)
Loss of Dependency	Rs. 98,94,688/-
Loss of consortium	Rs. 40,000/-
Loss of love and affection (2nd petitioner/appellant)	Rs. 1,00,000/-
Loss of love and affection (3rd petitioner/appellant)	Rs. 1,00,000/-
Loss of love and affection (4th petitioner/appellant)	Rs. 10,000/-
Damages	Rs. 2,000/-
Loss of estate	Rs. 15,000/-
Funeral expenses	Rs. 15,000/-
Total	Rs.1,01,91,688/-

4. The Insurance Company is directed to deposit the entire amount, with interest and costs directly through NEFT or RTGS as directed by the Tribunal, after adjusting the amount, if any, already deposited, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the *** appellants** 1, 3 & 4 are permitted to withdraw their respective shares, from the total compensation payable to them, as per the modified award passed this Court in the ratio fixed as stated below:-

1. 1st appellant Rs.51,91,688/-
2. 2nd appellant Rs.30,00,000/-
3. 3rd appellant **Rs.* 10,00,000/-**
4. 4th appellant Rs.10,00,000/-.

The share in respect of the second appellant who is minor, shall be deposited in any one of the Nationalised Banks, in interest bearing Fixed Deposit, till minor attain majority. The 1st appellant being the mother of the second appellant is permitted to withdraw the quarterly interest from the said deposit. 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.

5. In the result the Civil Miscellaneous Appeal is partly allowed and the award passed by the Tribunal to the tune of Rs.18,22,320/- is enhanced to Rs.1,01,91,688/-. The said amount shall carry the same rate of interest as awarded by the Tribunal namely 7.5% per annum and the apportionment shall be as ordered by this Court. Consequently, the connected miscellaneous petition is also closed. No costs.

Sd/-
Assistant Registrar(CS VIII)
Dated: 02/07/2018

***Corrected as per order of this Court dated 31/07/2018**

Sd/-
Assistant Registrar(CS V)
Dated: 21/08/2018

//True Copy//

Sub Assistant Registrar

dpq

To

The II Additional District Judge,
Poonamallee
(Motor Accident Claims Tribunal)

To be Substituted to the order already despatched on 05/07/2018

+1cc to Mr.F.Terry Chella Raja, Advocate, S.R.No.**51955**
+1cc to Mr.S.Dhakshinamoorthy, Advocate, S.R.No.**52004**

C.M.A.No.1880 of 2017
and CMP.No.2099 of 2018

TM(CO)
CS/03/07/18
GN(24/08/2018)