

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.04.2018

CORAM

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

C.M.A. No. 576 of 2016

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C.M.P. No. 4738 of 2016

The Oriental Insurance Company Ltd.,
Policy Issuing Office Dwaraka, II Floor,
79, Uttamar Gandhi Salai,
Nungambakkam, Chennai 600 034. .Appellant/2nd Respondent

Vs.

1. M. Sridhar
2. Soundaravalli
3. S. Adhilakshmi
(3rd respondent set ex parte in Lower
Court. Hence, notice is dispensed with)

. Respondents/Petitioner1&2/1st Respondents

Prayer: Civil Miscellaneous Appeal as against the judgment and decree dated 03.11.2015 passed in M.C.O.P. No. 236 of 2013 by the Motor Accidents Claims Tribunal (II Court of Small Causes, Chennai).

For Appellant : Mr.R. Sivakumar
For Respondent : Mr.F. Terry Chellaraja for
Mr.V. Velu for R1 & R2
R3- Exparte

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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. 16,19,000/- passed by the Motor Accidents Claims Tribunal (II Court of Small Causes), Chennai, in M.C.O.P. No.236 of 2013 by order dated

03.11.2015 for the death of one Devaki, aged about 42 years, self-employed, allegedly earning about Rs.20,000/- per month, in the accident, which occurred on 14.08.2012, when she was travelling as a pillion rider in a two-wheeler, bearing Registration No. TN 22 CW 2577, belonging to the 3rd respondent and insured with the appellant, driven rashly and negligently by the rider of the two-wheeler with great speed resulting in the falling of the said Devaki and sustaining fatal injuries.

2. Heard Mr.R. Sivakumar, learned counsel for the appellant and Mr.F. Terry Chellaraja, learned counsel for the 1st respondent.

3. The only question to be decided is with regard to the quantum of compensation alone.

4. Mr.R. Sivakumar, learned counsel for the appellant would submit that in the absence of any proof regarding the income of the deceased, the Tribunal was not justified in fixing the monthly income at Rs.8,000/-. Further, he would rely upon the Constitution Bench judgment of the Honourable Apex Court rendered in National Insurance Company Limited V. Pranay Sethi and Others reported in 2017 ACJ 2700 to contend that in respect of a self-employed person, aged about 40-50 years, only 25% has to be added towards "Future Prospects" whereas the Tribunal has added 50% towards "Future Prospects". Further, he would submit that Rs.2 lakhs has been given towards "Loss of love and affection", which is contrary to the abovesaid judgment of the Constitution Bench of the Honourable Apex Court. Similarly, Rs.25,000/- awarded towards "Funeral Expenses" and Rs.50,000/- awarded towards "Loss of Estate" are on the higher side and the same need to be reduced.

5. However, Mr.F.Terry Chellaraja, learned counsel for the claimant would justify the Tribunal's award.

6. The victim in this case was said to be self-employed, allegedly earning about Rs. 20,000/- per month. However, in the absence of any evidence, the Tribunal had fixed her notional income at Rs.8000/-per month. In the judgment of the Honourable Apex Court in Syed Sadiq and others V. Divisional Manager, United India Insurance Company Limited reported in 2014 ACJ 627, in respect of a vegetable vendor, the monthly income was fixed at Rs.6500/- for the injuries sustained by him in the accident, which took place in the year 2008 whereas in this case, the accident had occurred on 14.08.2012. Therefore, this Court fixes the monthly income of the victim at Rs.10,000/- , in view of the passage of 5 years. As rightly contended by Mr.R. Sivakumar, learned counsel for the appellant, 50% added towards

" Future Prospects" has to be reduced to 25%. Accordingly, 25% is added to the monthly income of the deceased and therefore, the total monthly income of the deceased would be Rs.12,500/-.

7. There are only two dependants and therefore, one-third has to be deducted towards "Personal Expenses". Accordingly, " the monthly contribution of the deceased to her family" would be

Monthly Contribution :: Rs.12,500/- (-) 1/3
(Rs.12,500/-)

:: Rs.8,333/-

Annual Contribution :: Rs.8333 x 12

The multiplier to be adopted, as per the age of the deceased, following the judgment in Sarla Verma's case (2009 ACJ 1298 (SC)) is 14. Therefore, applying the same,

Loss of Income :: Rs.8,333 x 12 x 14

:: Rs.14,30,000/-

The sum of Rs.2 lakhs awarded towards " Loss of love and affection" is deleted in the light of the Constitution Bench judgment of the Honourable Apex Court in Pranay Sethi's case (2017 ACJ 2700). The sum of Rs.25,000/- awarded towards " Funeral Expenses" and Rs.50,000/- awarded towards "Loss of Estate" are reduced to Rs.15,000/- each. Hence, the total compensation payable to the claimants/respondents 1 and 2 is,

Loss of Income :: Rs.14,30,000/-

Funeral Expenses :: Rs. 15,000/-

Loss of Estate :: Rs. 15,000/-

Total :: Rs.14,60,000/-

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

8. Since a sum of Rs.7,50,000/- has already been deposited by the Insurance Company before the Tribunal, the balance amount is directed to be deposited by the Insurance Company, as per the modified award passed by this court, along with proportionate 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 same to the bank account of the respective claimants, who would be entitled to 50% each, through RTGS, within a period of one week thereafter.

9. The Civil Miscellaneous Appeal is partly allowed reducing the compensation awarded by the Tribunal from Rs.16,19,000/- to Rs.14,60,000/-. No costs. Connected C.M.P. is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//
Sub Assistant Registrar

To

1.The II Court of Small Causes,
Motor Accident claims, Tribunal,
Chennai.

2.The Section Officer,
V.R.Section,
High Court Madras.

+1cc to Mr.R.Sivakumar, Advocate, S.R.No.24488

+1cc to Mr.M.Malar, Advocate, S.R.No.24653

C.M.A. No. 576 of 2016

(CO)
GSP (07/06/2018)



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