IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2018

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A.No.2297 of 2017

1. K.Yamini

2. K.Vedhavarsha (minor)

3. K.Munisharmila (minor)
(Minors 2 & 3 are rep.by mother Yamini/1st appellant)

4. K.Vanaja

5. K.Munusamy Naidu

6. V.Sulochana ... Appellants/Claimants

Vs

1. Nukalah Haribabu
2. The Oriental Insurance Company Ltd.,
T.P.Hub: Oriental House
New No.216 Old No.115,
Prakasam Salai, Broadway,
Chennai 600 108. ... Respondents/Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988 against the order and decree dated 04.04.2017 made in M.C.O.P.No.2410 of 2015 on the file of the Motor Accident Claims Tribunal, Chief Judge, Small Causes Court, Chennai.

For Appellant :Mr. Ramya Rao

For Respondents :Mr.R.Sivakumar for R2

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

Aggrieved over the award passed by the Motor Accident Claims Tribunal, Chief Judge, Small Causes Court, Chennai in MCOP. No. 2410 of 2015 dated 04.04.2017, the appellants herein, who are the petitioners in the above said MCOP, have filed this Appeal.

2. Heard the learned counsel for the appellants and the learned counsel for the Insurance Company.

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

On 22.10.2014 when the deceased Murali was riding his bike bearing Reg.No.KA-05-3601 from Uthukottai to Thiruvallur and when he was reaching Kathchur road near FCI Godown at around 9:00 p.m. a lorry bearing Reg.No.A9-27-TT-4499 was driven by its driver in a rash and negligent manner without abiding rules and regulations of the traffic suddenly took left and hit the bike and thereby caused the accident. The deceased Murali who was riding the bike died on the spot. After the accident complaint was given and FIR was registered by the C4 Pennalurpet Police Station, Uthukottai Taluk, Tiruvallur district. The deceased left behind his wife, two minor daughters, father and mother who are the legal heirs.

4. Therefore, the claimants filed petition for compensation before the Tribunal for a sum of Rs.3,68,45,000/- claiming that the deceased was earning Rs.60,000/- p.m.

5. On the other hand the first respondent owner cum driver was set exparte. The second respondent filed its counter stating that the accident was not due to the rash and negligent driving of the driver of the lorry, therefore compensation cannot be paid. The appellants/claimants preferred the present appeal only on the issue of quantum of compensation awarded by the Tribunal.

6. On the side of the claimants PW1 to PW3 were examined and Ex.P1 to Ex.P31 were marked. Ex.P.1 is the copy of the FIR, after investigation, police filed charge sheet against the driver of the lorry and the said charge sheet was marked as Ex.P.7. Ex.P2 is the copy of the post mortem certificate. The Doctor who conducted the Post Mortem has recorded that the cause for the death is RTA with head injury. PW2. Eye witness also narrated the facts of the accident which confirms the narrated facts of the case. However, first and second respondents did not refute such claims by adducing evidence. The Tribunal came to the conclusion that the accident occurred due to the rash and negligent driving on the part of the driver of the lorry. Though the issue of negligence is not raised in the present appeal we concur with the findings of the Tribunal on this point.

7. Quantum of compensation:- The claimants in the petition stated that the age of the deceased was 32 years at the time of death. In support of their contention Ex.P.5 Higher Secondary School certificate and Ex.P.24 Copy of the driving license of

the deceased also reveals that the Date of Birth of the deceased as 05.06.1982. The accident took place on 22.10.2014. Therefore the age of the deceased was 32 years at the time of accident.

8. Income of the deceased:- As per the evidence of PW1, the deceased was earning about Rs.60,000/- per month. He was working as Technical Engineer in Vijay TV through Randstand India Company and PW3 Pughazhendi in his evidence deposed that he was working as a Manager in Randstand Limited and the deceased Murali was employed in their company as an Executive in Vijay T.V. on deputation the deceased Murali was drawing Rs.32,000/- as monthly salary. He also produced the pay slip of the deceased for the month of September 2014 which is marked as Ex.P.28. On perusal of the Ex.P.28 the designation was mentioned as an Executive. PW3 while cross examination deposed that attendance register, salary register and service register are maintained, but they were not produced before the Tribunal and further admitted that the deceased Murali was employed on contract basis and stated that he did not know when the contract started and when it ends. The evidence of PW3 did not impress the Tribunal. In the absence of any acceptable documentary evidence, the income of Rs.32,000/- as monthly salary of the deceased was not accepted and the Tribunal fixed notional income of Rs.10,000/-, since the claim of Rs.60,000/- or Rs.32,000/- also not proved by adducing relevant documents, therefore the Tribunal fixed the notional income of the deceased as Rs.10,000/- for the purpose of determination of salary.

9. On the other hand, the respondent stated that the deceased Murali was employed on contract basis and there is no evidence to prove that the deceased was earning either Rs.32,000/- or Rs.32,121/- or Rs.34,158/-

10. Ex.P.31 copy of the bank statement of the deceased starting from 11.02.2012 to 27.10.2014 was filed and marked through PW1. As per Bank statement every month the deceased was receiving salary from his company by way of NEFT/direct transfer from employer bank account into his account and the salary credited in his account is only after deducting necessary deduction from his salary. Last salary received by the deceased was Rs.32,106/- and the said amount was credited on 27.10.2014.

11. This Court raised an issue that whether the deceased was filing income tax returns.

The learned counsel for the claimants produced Form-16 for the proof of filing the income tax returns, the salary of the deceased for the financial year 2013-2014 which was filed on

30.05.2014 by the deceased and 12 months gross salary was shown as Rs.3,90,947/-. Further after the death of the deceased, income tax return was filed on 22.06.2015 and the gross salary for the period of eight months was shown as Rs.2,67,290/-. Since there are two returns available before this Court, one return pertaining to the financial year 2013-2014 which was filed by the deceased when he was alive and in that the Gross salary was shown as Rs.3,94,289/-. The other one was filed after the death of the deceased, in that eight months income was shown as Rs.2,67,290/-. As per the financial year 2013 - 2014 income tax return, the salary per month was Rs.32,995/-.

12. On the perusal of the salary slips, Ex.P.31 Bank statement of the deceased and the income tax return for the financial year 2013-2014 and 2014-2015, it reveals that the deceased was working in Vijay T.V. through Randstand India Company and his salary was credited in his account from the year 2012 to October 2014, wherein during October 2014, the deceased salary, after all deductions was credited at about Rs.32,000/-. Therefore, this Court intend to take the annual salary based on the last income tax returns filed by the deceased for the financial year 2013-2014. Hence this Court takes the annual salary of the deceased as Rs.3,95,947/- and monthly salary will be Rs.32,995/- for the purpose of determining compensation to the claimants.

13. Future Prospects:- The age of the deceased was 32 years at the time of death. The Tribunal wrongly fixed 50% towards future prospects. Therefore we set aside 50% and fix the future prospects based on the Hon'ble Apex Court judgment in the case of National Insurance Company Limited Vs. Pranay Sethi reported in 2017-13 SCALE 12, in which the Hon'ble Apex Court has held that if the deceased was having fixed salary and below the age of 40 years, 40% of the monthly income to be added as future prospects. Accordingly, the annual income of the deceased would be Rs.3,95,947/-p.a. Adding a component of 40% for future prospects, the income would stand at Rs.5,54,325/-p.a. The total loss of income of the deceased for the purpose of calculation of compensation to the claimants along with future prospects will be a sum of Rs.5,54,325/-. From this amount we have to deduct income tax payable by the deceased along with professional tax. In the present case professional tax payable by the deceased would be a sum of Rs.2,190/-. Now we have to calculate the income tax on the income of Rs.5,54,325/-. From Rs.5,54,325/- we deduct standard deduction of Rs.2,00,000/- which will be exempted from payment of tax and the balace amount will be Rs.3,54,325/-. Since 10% tax will be chargeable for the income of the deceased from Rs.2,00,000/- to Rs.5,00,000/-. Hence, for this Rs.3,00,000/- amount, the deceased is liable to pay a sum

of Rs.30,000/- towards income tax. Balance amount beyond Rs.5,00,000/- income the deceased is liable to pay 20% of income tax. In the present case, above Rs.5,00,000/- the income of the deceased will be Rs.54,325/- for the said amount the deceased is liable to pay a sum of Rs.10,865/-. So the total tax payable by the deceased is a sum of Rs.30,000+10,865=40,865. The income tax along with the professional tax of Rs.43,055/- shall be deductable from the gross income of the deceased. If we deduct these tax amount of Rs.43,055/- the balance amount available for the determination of compensation will be Rs.5,54,325 - 43,055 = Rs.5,11,270.

14. There are six claimants, though there are six claimants the Tribunal took 1/4th deduction towards personal expenses Considering the fact that the sixth claimant who is the sister of the deceased got married and therefore the Tribunal took 1/4th deduction as held by the Hon'ble Supreme Court in the case of Sarla Verma and others Vs.Delhi Transport Corporation and another reported in 2009 ACJ 1298 SC, we also concur with the findings of the Tribunal in this regard. of. After deducting 1/4th from Rs.5,11,270/- the loss of income to the deceased will be Rs.3,83,452/- p.a.

15. Now with regard to the multiplier, the Hon'ble Apex Court in the case of Sarla Verma and others Vs.Delhi Transport Corporation and another reported in 2009 ACJ 1298 SC held that if the person having the age of 31 to 35 years the multiplier of "16" to be taken into account for calculating the loss of dependency. Hence we take the multiplier of '16' for the purpose of calculating the loss of earning of the deceased. The total loss of dependency will be a sum of Rs.3,83,452 x 16 = 61,35,232/-

16. The Tribunal awarded a sum of Rs.1,00,000/- to the first claimant/wife towards loss of consortium, in this regard as per the Hon'ble Apex Court in the judgment of Pranay Sethi's case (cited supra), we re-fix the amount as Rs.40,000/- towards consortium. The Tribunal awarded a sum of Rs.1,05,000/- towards love and affection, since consortium has been awarded to the first claimant/wife we cannot award any amount towards love and affection and we refix the same as Rs.50,000/- each for 2nd and 3rd claimants who are minors and for the 4th to 6th claimants we fix as Rs.10,000/- each. The Tribunal awarded a sum of Rs.5,000/- towards "Transportation" we enhance it to Rs.10,000/-. Under the head "Funeral expenses" this Court is inclined to reduce the amount from Rs.25,000/- to Rs.15,000/- as fixed in Pranay Sethi's case (cited supra) by the Hon'ble Supreme Court of India. As no amount has been awarded under the

head "loss of estate" this Court is inclined to award a sum of Rs.15,000/- as per the Constitution Bench's judgment in National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC).

17. Hence the total compensation payable to the claimants is as hereunder.

Head	Amount
Loss of Dependency	Rs.61,35,232/-
Transportation	Rs.10,000/-
Loss of love and affection to the 2nd and 3rd claimants (Rs.50,000/- each) Loss of love and affection to the 4th to 6th claimants (Rs.10,000/- each)	Rs.1,00,000/- Rs.30,000/-
Loss of estate	Rs.15,000/-
Loss of Consortium	Rs.40,000/-
Funeral expenses	Rs.15,000/-
Total	Rs.63,45,232/-

18. The total amount of compensation shall be shared by the claimants 1 to 6 herein, in the following manner:-

19. 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, 4, 5 & 6 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.32,45,232/-
2. 2nd appellant Rs.11,00,000/-
3. 3rd appellant Rs.11,00,000/-
4. 4th appellant Rs.3,00,000/-
5. 5th appellant Rs.3,00,000/-
6. 6th appellant Rs.3,00,000/-

The share in respect of the second and third appellants who are minors, shall be deposited in any one of the Nationalised Banks, in interest bearing Fixed Deposit, till minors attain majority. The 1st appellant being the mother of the second and third appellants 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.

20. In the result the Civil Miscellaneous Appeal is partly allowed and the award passed by the Tribunal to the tune of Rs.23,95,000/- is enhanced to Rs.63,45,232/-. 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. No costs.

s/d-
Assistant Registrar(CS VII)

True Copy

Sub-Assistant Registrar

dpq
To
The Chief Judge
Motor Accident Claims Tribunal
Small Causes Court, Chennai

+2 Ccs to Mr.A.N. Viswanatha Rao, Advocate sr 45601.
+1 CC to Mr.R. Sivakumar, Advocate sr 45671.

C.M.A.No.2297 of 2017

KGK(CO)
SP(04/09/2018)