IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.06.2018

CORAM

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

C.M.A. No. 2537 of 2017
&
Cross-Objection No.78 of 2017

Royal Sundaram Alliance Insurance Company Limited,
8/H1, Mangalam Building,
4 Road, Salem 636 009. ..Appellant/2nd respondent in Cross-objection/3rd Respondent

Vs.

1. Maheswari
2. Minor Rubiksha
(Minor 2nd respondent rep. by her mother & Next friend 1st respondent)

3. Lakshmi
4. Elumalai
5. Kumar ..Respondents 1 to 5/ Cross-Objectors/Petitioners

6. M. Palaniswamy
7. M/s. Valar & Co.,
2/78, Padarangadu,
Konasamudram Post,
Konganapuram (via),
Edappadi Taluk,
Salem District. ..Respondents 6 & 7 in appeal/Respondents 2 & 3 in Cross-Objection/Respondents 1 & 2

Prayer:
Civil Miscellaneous Appeal as against the judgment and decree dated 20.04.2017 passed in M.C.O.P. No. 864 of 2010 by the Motor Accidents Claims Tribunal (Sub Court), Sangagiri.

For Appellant in CMA :: Mr.S. Manohar
for R2 in Cross Objn

For Respondents in CMA :: Mr.C. Kulanthaivel
& for Cross Objectors in for R1 to R5
Cross Objection R6 & R7 – ex parte

J U D G M E N T

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

This Civil Miscellaneous Appeal has been preferred by the Insurance Company as against the award of Rs. 21,90,000/-, for the death of one Raja, aged about 34 years, contract labour in Electricity Board, Konganapuram, agriculturalist as well as electrician, alleged to be earning about Rs.20,000/- per month, in the accident, which occurred on 17.10.2010, when he was riding his motor cycle, which was hit down by the Tipper Lorry belonging to the 7th respondent and driven by the 6th respondent and insured with the appellant Insurance Company.

2. The claimants have also filed a Cross-Objection questioning the quantum of compensation.

3. Heard Mr.S. Manohar, learned counsel for the appellant and Mr.C. Kulanthaivel, learned counsel for respondents 1 to 5/claimants.

4. The only question to be decided is with regard to the quantum of compensation as the question of negligence is not argued by the learned counsel for the appellant.

5. The deceased was alleged to be employed as a contract labour in Tamil Nadu Electricity Board, Konganapuram. To prove that he was employed as a contract labour, P.W.4, Executive Engineer from TNEB and P.W.5, a co-worker, by name, Periasamy, have been examined. P.W.4 deposed that the deceased was employed as a contract labour from 13.03.2008 till his death and a consolidated sum of Rs.3100/- was paid in 2012, Rs.3200/- was paid in 2013 and Rs.4000/- was paid in 2014 and thereafter, the services of contract labourers were regularised on a pay scale of Rs.13,100/-. But, the victim Raja, died in the accident on 17.10.2010, before his services were regularised and therefore, his chance of regularisation was lost. The Tribunal, taking into consideration, ITI qualification possessed by the deceased and that he would have worked privately also, determined the monthly income at Rs.11,120/-, namely, Rs.8000/- privately and Rs.3,120/-, being the amount paid to him as contract labour. However, the Tribunal, restricted the monthly income to Rs.8000/-.

6. The above determination of the monthly income of the deceased by the Tribunal is not sustainable. The evidence of P.W.4, the Executive Engineer and P.W.5-co-worker would reveal that similarly placed persons, employed in TNEB, as contract labour, were regularised in service and the monthly salary was fixed at Rs.13,100/- in 2014. In this regard, Ex.X1 has been marked through P.W.4. Therefore, this Court fixes the monthly income of the deceased at Rs.13,100/- based on Ex.X1 coupled with the testimony of P.Ws 4 and 5. On account of fixation of Rs.13,100/- as the monthly income of the deceased, no "future prospects" are added as this will serve the purpose. Therefore, Rs.8000/- determined by the Tribunal as the monthly income of the deceased is enhanced to Rs.13,100/-, inclusive of future prospects.

7. The size of the family of the deceased, though stated to be five, the 5th respondent is the brother of the deceased and therefore, taking the number of dependants as four, the Tribunal rightly deducted one-fourth towards "Personal Expenses". Applying the said deduction, "the monthly contribution of the deceased to his family" is worked out as hereunder:

Monthly Income :: Rs.13,100/-
LESS:1/4th towards "Personal

Expenses" :: Rs.13,100/- (-) ¼(Rs.13,100/-)
:: Rs.13,100/- (-) Rs.3275/-
:: Rs.9825/-

The Tribunal determined the age of the deceased as 35 years, as per Ex-P13, Driving Licence and accordingly, multiplier 16 was rightly adopted by the Tribunal to compute "Loss of Income". Applying the said multiplier, "Loss of Income" comes to Rs.18,86,400/- (Rs.9825 x 12 x 16).

8. As far as the amounts awarded under the other heads are concerned, the Tribunal has awarded a sum of Rs.1 lakh towards "Loss of Consortium," and the same is reduced to Rs.40,000/- following the judgment of the Constitution Bench of the Honourable Apex Court in National Insurance Company Limited V. Pranay Sethi and Others (2017 ACJ 2700).

9. A sum of Rs.3,25,000/- was awarded towards "Loss of Love and Affection" to respondents 1 to 4. The sum of Rs.1 lakh awarded to the 1st respondent/wife is set aside while the sum of Rs.1 lakh awarded to the 2nd respondent, who was a minor at the time of accident, aged about 2 years is confirmed as she has been deprived of her father's love, care, guidance and affection right from her childhood and for the rest of her life. Moreover, the amount awarded towards "Loss of love and

affection" is akin to the amount awarded towards "Loss of Consortium" to the spouse. As far as the 3rd and 4th respondents are concerned, they would together be entitled to Rs.1 lakh under the said caption. No amount was awarded towards "Loss of Estate". Hence, a sum of Rs.15,000/- is granted. Rs.25,000/- awarded towards "Funeral Expenses" is reduced to Rs.15,000/- while Rs.10,000/- awarded towards "Transport Expenses" is confirmed. The total compensation payable to respondents 1 to 4 is as follows:

Loss of Income	::	Rs.18,86,400/-
Loss of Consortium	::	Rs. 40,000/-
Loss of Love and Affection to R2 to R4	::	Rs. 2,00,000/-
Funeral Expenses	::	Rs. 15,000/-
Transport Expenses	::	Rs. 10,000/-
Loss of Estate	::	Rs. 15,000/-
Total	::	Rs.21,66,000/-

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

10. Out of the award amount of Rs.21,66,000/-, the 1st respondent/wife would be entitled to Rs.10 lakhs; the 2nd respondent/minor daughter would be entitled to Rs.9 lakhs; the 3rd respondent/mother would be entitled to a sum of Rs.2 lakhs and the 4th respondent/father would be entitled to Rs.66,000/-.

11. The appellant Insurance Company is directed to deposit the award amount, with interest and costs, as per the modified award passed by this Court, after deducting the amount already deposited, if any, before the Tribunal, within a period of six 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 respondents 1, 3 and 4, as per the apportionment made by this Court, to their respective bank accounts, through RTGS, within a period of one week thereon. The share of the minor respondent shall be deposited in interest bearing Fixed Deposit in any one of the Nationalised Banks, till she attains majority. The 1st respondent is permitted to withdraw interest accruing on such deposit once in three months.

12. Resultantly, the Civil Miscellaneous Appeal filed by the Insurance Company is partly allowed and the Cross-Objection filed by the claimants stands dismissed. The compensation awarded by the Tribunal is reduced from Rs.21,90,000/- to Rs.21,66,000/- with interest @ 7.5% per annum. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

nv

To

The Motor Accidents Claims Tribunal,
Sub Court, Sangagiri.

+1cc to Mr.S. Manohar, Advocate, S.R.No.34931
+1cc to Mr.C. Kulanthaivel, Advocate, S.R.No.35051

C.M.A. No. 2537 of 2017
&
Cross-Objection No.78 of 2017

GJ(CO)
CS/17/07/18