IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2018

CORAM

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

C.M.A. No. 2782 of 2017
&
C.M.P. No. 15885 of 2017

M/s. Cholamandalam MS General
Insurance Company Limited,
Head Office,
Dare House, II Floor,
NSC Bose Road,
Chennai - 600 001. ..Appellant/Respondent

Vs.

1. Navarathinam

2. Vishwapriya

3. Santhosh Kumar

4. Ananda Kumar

5. Rajan ... RR1 to 5/Petitioners

6. Gangadhar ..6th Respondents/1st Respondent

Prayer: Civil Miscellaneous Appeal as against the judgment and decree dated 28.07.2016 passed in M.C.O.P. No.1347 of 2013 by the Motor Accidents Claims Tribunal (Additional District Court), Namakkal.

For Appellant :: Mr.R. Mohan Babu for
Mr.N. Vijayaraghavan

For Respondents :: Mr.Ma.P. Thangavel for
R1 to R5
R6-NA

J U D G M E N T

(Judgment 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.17,46,000/- granted as compensation for the death of one R. Vijayakumar, aged about 57 years, working as Field Supervisor & Representative in Priyadarsini Traders, Tiruchengode Road, Namakkal, allegedly earning about Rs.16,000/- per month, in the accident, which occurred on 23.02.2013, when the said R.Vijayakumar, who was riding his Yamaha two-wheeler on Coimbatore-Salem NH47 main road, hit against a Tata Ace vehicle, belonging to the 6th respondent and insured with the appellant, which was going in front, as it suddenly stopped on the road.

2. Heard Mr.R. Mohan Babu, learned counsel for the appellant and Mr.Ma.P. Thangavel, learned counsel for the claimants.

3. It is submitted by Mr.R. Mohan Babu, learned counsel for the appellant that the accident occurred because of the rash and negligent driving by the victim as he hit Tata Ace vehicle, which was going in front of his motor cycle and therefore, negligence should not have been fixed on the driver of Tata Ace vehicle. Regarding quantum, he would submit that the sum of Rs.1 lakh awarded towards "Loss of Consortium" to the 1st respondent/wife of the deceased is contrary to the judgment of the Constitution Bench of the Honourable Apex Court rendered in National Insurance Company Limited V. Pranay Sethi and others reported in 2017 ACJ 2700.

4. On the other hand, Mr.Ma.P. Thangavel, learned counsel for the claimants would support the award and would also point out that the Tribunal did not add 10% towards "Future Prospects" as the deceased was aged about 57 years, at the time of accident, as per the judgment in Pranay Sethi's case.

5. Heard the parties and perused the records.

6. With regard to negligence aspect, no doubt, the two-wheeler driven by the deceased, hit Tata Ace, the insured vehicle, on the rear side. The Tribunal, based on the evidence of eye-witness, P.W.2, found that the accident occurred because of the rash and negligent driving of Tata Ace vehicle as the driver of the said vehicle suddenly applied brake and stopped the vehicle without any signal, which eventually led to the two-wheeler driven by the deceased hitting against Tata Ace. Therefore, the Tribunal rightly came to the conclusion that the accident occurred because of the rash and negligent driving by

the driver of the insured vehicle.

7. It is true that the driver of Tata Ace vehicle gave Ex-P1 FIR accusing the deceased as having been rash and negligent. It is quite natural that the driver of Tata Ace Vehicle had shifted the blame on the deceased, stating that he was responsible for the accident, in view of the fact that he is no more. Moreover, it is human tendency to shy away from owning the responsibility for the fault committed and therefore, this Court cannot expect the driver of Tata Ace to admit negligence on his part, even if he had been negligent. Further, the driver of Tata Ace was not examined. The Insurance Company should have examined the driver of Tata Ace vehicle, who lodged the FIR, to sustain the allegations made in the FIR. Though the final report has also been filed against the deceased, the same cannot be taken as truth in view of the evidence of P.W.2, eye-witness, given on oath. The evidence given on oath should be given more credence rather than FIR and charge sheet, which are documents filed by the Police, only to see that the criminal law is set in motion. Therefore, in the absence of any rebuttal evidence, the Tribunal rightly found that the accident occurred because of the rash and negligent driving by the driver of Tata Ace vehicle. Even the driver of the said vehicle could not have witnessed the accident as the two-wheeler of the deceased hit against his vehicle from behind. Though the driver had no chance to witness the accident, still, he had deliberately lodged the FIR making allegations against the deceased only to escape from law. Therefore, the finding rendered by the Tribunal with regard to negligence aspect, stands confirmed.

8. It is proved that the deceased was a BBA Degree Holder and further proved that the deceased was working as a Field Supervisor and Representative, earning about Rs.16,000/- per month, by examining P.W.3, the employer. Further, Exs-P13 and P14, income-tax returns and Ex-P10, Salary Certificate would also prove that the deceased was earning Rs.16,000/- per month and therefore based on Ex-P10, Salary Certificate and the evidence of P.W.3, employer, the Tribunal rightly determined the monthly salary of the deceased at Rs.16,000/-. However, as rightly submitted by Mr.Ma.P. Thangavel, the Tribunal failed to add any amount towards "Future Prospects". Considering the age of the deceased, namely, 57years, 10% has to be added towards "Future Prospects", in the light of the judgment of the Constitution Bench of the Honourable Apex Court in Pranay Sethi's case (2017 ACJ 2700). Adding 10%, the "total monthly income" of the deceased comes to Rs.17,600/- (Rs.16,000/- (+) 10%(Rs.16,000/-). Since the size of the family of the deceased is five, namely, wife, three children and father, the Tribunal rightly deducted one-fourth towards "Personal Expenses". After deduction of one-fourth, "the

monthly contribution of the deceased" comes to Rs.13,200/- (Rs.17,600 (-) ¼(Rs.17,600/-)). The age of the deceased is proved by Ex-P8, Driving Licence, as 57 years and the appropriate multiplier for the said age, as rightly adopted by the Tribunal, is 9. Therefore, applying the said multiplier, "Loss of Income" is arrived at as hereunder:

Loss of Income :: Rs.13,200 x 12 x 9
:: Rs.14,25,600/-

9. The Tribunal has awarded a sum of Rs.1 lakh towards "Loss of Consortium", as per law, which was in existence, at that point of time. However, because of change in law, as per the recent pronouncement of the Constitution Bench of the Honourable Apex Court in Pranay Sethi's case (2017 ACJ 2700), the sum of Rs.1 lakh awarded towards "Loss of Consortium" is necessarily reduced to Rs.40,000/-. The sum of Rs.25,000/- awarded towards "Funeral Expenses" is also reduced to Rs.15,000/-. A sum of Rs.15,000/- is awarded towards "Loss of Estate" following the aforesaid judgment, as no amount was awarded towards the same. A sum of Rs.10,000/- is awarded towards "Transportation Charges". As far as "Loss of Love and Affection" is concerned, the Tribunal awarded Rs.3,25,000/- to respondents 2 to 5, who are daughter, two sons and father of the deceased. Since respondents 2 to 4 are aged 30 years, 29 years and 26 years respectively, the sum of Rs.1 lakh awarded to each one of them is on the higher side and the same is reduced to Rs.40,000/- each and Rs.25,000/- awarded to the 5th respondent/father is enhanced to Rs.40,000/- under the said head. The total compensation payable to the claimants, comes to Rs.16,65,600/-. The rate of interest awarded by the Tribunal @ 7.5% per annum remains intact.

10. Out of the total compensation amount of Rs.16,65,600/-, the 1st respondent/wife would be entitled to Rs.8 lakhs, respondents 2 to 4 would be entitled to Rs.2 lakhs each and the 5th respondent would be entitled to 2,65,600/-.

11. The appellant Insurance Company is directed to deposit the entire amount, as per the modified award passed by this Court, with interest and costs, before the Tribunal, after deducting the amount already deposited, if any, 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 the claimants to their respective bank accounts, as per the apportionment made by this Court, through RTGS, within a period of one week thereon. If the amount, as per the award of the Tribunal, had already been deposited by the appellant, then the Tribunal, after transferring the respective shares of the claimants, as per the award passed by this Court,

shall refund the excess amount to the appellant.

12. In the result, the Civil Miscellaneous Appeal is partly allowed reducing the compensation awarded by the Tribunal from Rs.17,46,000/- to Rs.16,65,600/- with interest @ 7.5% per annum. No costs. Connected C.M.P. is closed.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

nv

To

The MACT (Addl. District Court)
Namakkal.

Copy TO

The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mr.N.vijayaraghavan, Advocate SR.No.41576

C.M.A. No. 2782 of 2017

PPA(CO)
GN(20/08/2018)