IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2018

CORAM :
THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY
C.M.A.No.594 of 2018

1.A.Dhavamary
2.A.Kitheriyammal ... Appellants/Petitioner

Vs

1.R.Lakshmanan

2.The National Insurance Company Ltd.,
No.165, Nethaji Road, Majakuppam,
Cuddalore. ... Respondents/Respondents

PRAYER : Civil Miscellaneous Appeal preferred against the Judgment and Decree passed by the Motor Accident Claims Tribunal (Prl. District Judge) at Cuddalore in MCOP.No.3508 of 2014 dated 01.09.2017.

For Appellants : Mr.P.Paramasiva Doss
For Respondents : Mr.S.Vadivel, for R-2

J U D G M E N T

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

The appeal has been preferred by the claimants against the award of the Rs.60,00,000/- as compensation to the legal heirs of the deceased, A.Lawrence, aged about 49 years, Chief Technician in Neyveli Lignite Corporation Limited, Neyveli, allegedly earning about Rs.75,000/- per month, in the accident, which occurred on 08.08.2014, when he was riding his motorcycle from West to East direction on Ramalingam Road at Neyveli Township and was hit down by the car belonging to the 1st respondent and insured with the 2nd respondent, driven by its driver in a rash and negligent manner. Therefore, the claim petition.

2.On contest, the Tribunal found that the accident occurred because of the rash and negligent driving of the car and awarded a sum of Rs.60,00,000/- as compensation to the claimants.

3.Heard Mr.P.Paramasiva Doss, learned counsel appearing for the appellants/claimants and Mr.S.Vadivel, learned counsel appearing for the 2nd respondent/Insurance Company.

4.Since the appeal came before this Court, questioning the quantum of the compensation alone and no appeal has been preferred by the Insurance Company regarding the negligence aspect, this Court is of the opinion that the only question to be decided is with regard to the quantum alone as the finding on negligence aspect has already attained finality.

5.Mr.P.Paramasiva Doss, learned counsel appearing for the appellants/claimants would point out that as per Ex.P.7-Salary Certificate, the last drawn monthly salary of the deceased was Rs.91,494/-, whereas the Tribunal erroneously took the monthly income at Rs.70,021/- and moreover, he would point out that no future prospects has been added in the monthly income and thus, seeks enhancement of compensation.

6.Mr.S.Vadivel, learned counsel appearing for the 2nd respondent/Insurance Company would support the award. Further, he would point out that the award of interest at the rate of 8% per annum is on the higher side and therefore, he seeks to reduce the interest at the rate of 7.5% per annum.

7.It is evident from Ex.P.7-Salary Certificate, issued by the Neyveli Lignite Corporation Limited, Neyveli, that the last drawn salary of the deceased was Rs.91,494/-. That amount only has to be taken into consideration to determine the monthly income. However, the Tribunal erroneously took Rs.70,021/- as monthly income.

8.As per Ex.P.2-Post Mortem Certificate, the age of the deceased is 50 years at the time of the accident. As the age of the deceased is 50 years, as per the Constitution Bench's judgment of the Honourable Apex Court in National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC). 15% has to be added towards future prospects. After adding 15% towards future prospects, the monthly income would be at Rs.1,05,218/- (Rs.91,494/- + 15% of Rs.91,494/-) and the yearly income would be at Rs.12,62,616/-.

9.In the aforesaid yearly income, standard deduction, which does not attract income tax during the year 2014 is Rs.2,00,000/- and if Rs.2,00,000/- is deducted, the taxable income would be at Rs.10,62,616/-. Out of the taxable income of Rs.10,62,616/-, upto Rs.3,00,000/-, 10% has to be deducted towards income tax. 10% of taxable income comes to Rs.30,000/- (10% of Rs.3,00,000/-). Remaining taxable income is Rs.7,62,616/- (Rs.10,62,616/- - Rs.3,00,000/-). From this Rs.7,62,616/-, upto Rs.5,00,000/-, 20% has to be deducted towards income tax. 20% of taxable income comes to Rs.1,00,000/- (20% of Rs.5,00,000/-). Remaining taxable income is Rs.2,62,616/- (Rs.7,62,616/- - Rs.5,00,000/-). For this Rs.2,62,616/-, 30% has to be deducted towards income tax. 30% of taxable income comes to Rs.78,785/-. Therefore, total income tax comes to Rs.2,08,785/- (Rs.30,000/- + Rs.1,00,000/- + Rs.78,785/-). After deducting income tax, the yearly income would be at Rs.10,53,831/- [Rs.12,62,616/- (-) Rs.2,08,785/-].

10.The Tribunal has rightly adopted "13" as multiplier, as the age of the deceased is 50 years, hence the same is confirmed. Therefore, the loss of income would be at Rs.1,36,99,803/- (Rs.10,53,831/- x 13).

11.Since the size of the family is 2, as per the judgment of the Honourable Supreme Court in Sarla Verma & Others .Vs. Delhi Transport Corporation & another, reported in 2009 (2) TNMAC 1 (SC), 1/3rd has to be deducted towards personal expenses of the deceased. After deducting 1/3rd towards personal expenses, the loss of income would be at Rs.91,33,202/- [Rs.1,36,99,803/- (-) 1/3rd of Rs.1,36,99,803/-]

12.Loss of consortium:

The Tirbunal has awarded a sum of Rs.1,00,000/- to the 1st claimant/appellant towards loss of consortium, which is not in consonance with the Constitution Bench's judgment of the Honourable Apex Court in National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC). Therefore, the same is reduced to Rs.40,000/-.

13.Loss of love and affection:

The Tribunal has awarded a sum of Rs.25,000/- under this head to the 2nd claimant/appellant, the same is confirmed.

14.Transportation and Funeral expenses:

The Tribunal has awarded a sum of Rs.25,000/- under this head, the same is confirmed.

15.Loss of Estate:

No amount has been awarded under this head by the Tribunal. As per the Constitution Bench's judgment of the Honourable Apex Court in National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC), a sum of Rs.15,000/- is awarded under this head.

Head	Amount (Rs.)
Total loss of income	9133202

Head	Amount (Rs.)
Loss of consortium	40000
Loss of love and affection	25000
Transportation and Funeral expenses	25000
Loss of estate	15000
	9238202

16.Hence, the total compensation payable in this case is Rs.92,38,202/- rounded off to Rs.92,38,000/-

17.The interest awarded by the Tribunal at the rate of 8% per annum is on the higher side, hence the same is reduced to 7.5% per annum. Out of the award amount, the 1st appellant/claimant is entitled to Rs.60,00,000/- and the 2nd appellant/claimant is entitled to Rs.32,38,000/-.

18.The claimants are directed to pay the additional court fee, if any, within a period of two weeks from the date of receipt of a copy of this order, failing which, the enhancement made by this Court shall be automatically deleted. The necessity to include the above clause is only to see that the additional court fee is paid promptly, as many complaints are received from the registry stating that the claimant's counsel are not paying the additional court fee for the enhanced award amount and thereby delaying the copy being made ready, which prevented the insurance company or transport corporation to receive the order copy, so that they could file an appeal or to act upon the order passed by this Court. On payment of such additional court fee, the Registry is directed to note/make entry about the payment of court fee in the Decree itself.

19.The Insurance company is directed to deposit the award amount as per the modified award passed by this Court, with interest and costs, before the Tribunal, within a period of six weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any. On such deposit being made, the Tribunal is directed to transfer the respective shares of claimants 1 and 2 along with proportionate interest and costs to their respective bank accounts through RTGS within a period of one week thereon.

20.Accordingly, this appeal is partly allowed, enhancing the award of the Tribunal from Rs.60,00,000/- to Rs.92,38,000/- with interest. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

sra/sai

To

The Principal District Judge
(Motor Accident Claims Tribunal)
Cuddalore.

+1cc to Mr.P.Paramasivadoss, Advocate, S.R.No. 44703
+1cc to Mr.S.Vadivel, Advocate, S.R.No. 44452

C.M.A.No.594 of 2018

KJ(CO)
GN(25/09/2018)