IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.07.2018

CORAM

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

C.M.A. Nos. 2895 and 2896 of 2017
and
C.M.P.Nos.16988 and 16990 of 2017

C.M.A. No. 2895 of 2017

Royal Sundaram Alliance Insurance Co. Ltd.,
No.21, Pattullos Road,
Chennai 600 002.
...Appellant/R2

Vs.

1.E.Sulochana ... R1/P1

2.Minor E.Sathiya Keerthika
Minor rep. by her mother E.Sulochana ... R2/P2

3.E.Saravanan ... R3/R1
4.A.Ponnusamy ... R4/R3
5.S.Sarulatha ... R5/R4

6.The Oriental Insruance Co. Ltd.,
A.A.Complex, 1st Floor, No.159,
Kumaran Road, Tirupur 641 601. ... R6/R5

(RR3 to 5 remained exparte and notice dispence with)

Prayer: Civil Miscellaneous Appeal filed under section 173 of MC Act 1988 against the Judgment and Decree in M.C.O.P.No.158 of 2012 dated 30.11.2016 on the file of the Motor Accident Claims Tribunal (IV Additional District Judge), Erode District at Bhavani.

For Appellant : Mr.M.Krishnamoorthy
Mr.M.Logesh

For Respondents : Mr.Ma.Pa.Thangavel
(for R1 & R2)
R3 to R5 - Exparte
R6 - No appearance

C.M.A. No. 2896 of 2017

Royal Sundaram Alliance Insurance Co. Ltd.,
No.21, Pattullos Road, Chennai 600 002. ...Appellant/R2

Vs.

1.Rajammal ... R1/P1

2.S.Duraisamy ... R2/P2

3.Minor S.Mythili
Minor rep. by her monther Rajammal ... R3/P3

4.E.Saravanan ... R4/R1

5.A.Ponnusamy ... R5/R3

6.S.Sarulatha ... R6/R4

7.The Oriental Insurance Co. Ltd.,
A.A.Complex, 1st Floor, No.159,
Kumaran Road, Tirupur 641 601. ... R7/R5

(RR4 to 6 remained exparte and notice dispensed with)

Prayer: Civil Miscellaneous Appeal filed under section 173 of MC act 1988 against the Judgment and Decree in M.C.O.P.No.202 of 2012 dated 30.11.2016 on the file of the Motor Accident Claims Tribunal (IV Additional District Judge), Erode District at Bhavani.

For Appellant : Mr.M.Krishnamoorthy
For Respondents : Mr.M.Logesh for
Mr.Ma.Pa.Thangavel(for R1 to R3)
R4 to R6 - Exparte
R7 - No appearance

COMMON JUDGMENT

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

These Appeals have been preferred by the insurance company against the common award passed in claim petitions filed by the respective claimants, for the death of two persons in the accident, which occurred on 26.12.2011, when the two persons, who died in the accident, while travelling in an Esteem car from Salem, tried to take right towards Thuduppathi Road, a Swift Car, insured with the appellant insurance company, which was coming from Coimbatore towards Salem, collided with the said Esteem car and caused the accident. Therefore the claim petitions.

2.Heard Mr.M.Krishnamoorthy, learned counsel appearing for the appellant in both the appeals and Mr.M.Logesh, representing Mr.Ma.Pa.Thangavel, learned counsel for the claimants in both the appeals.

3.It is evident from Ex.P.2 rough sketch, that the Esteem car in which the deceased were travelling was coming from Salem and in a four way junction, it was crossing right side towards Thuduppathi road and at that time, the Swift car, insured with the appellant/insurance company came from Coimbatore towards Salem (i.e.,) West to East direction and in the junction, both the vehicles collided. Though the Tribunal elaborately dealt how the accident would have occurred, took into consideration the evidence of PW3 and determined the liability on the part of the driver of the Swift Car viz., vehicle insured with the appellant/insurance company. It is a fact that Ex.P1-FIR was registered against the driver of the Esteem car, in which the deceased were travelling and insured with the Oriental Insurance Company Company Limited. The said Ex.P.1-FIR was given by the driver of the Swift car insured with the appellant/insurance company. Though there is no rebuttal evidence either on the side of the appellant/insurance company or the owner, with regard to the manner of the accident, contradicting or denying PW3-eyewitness's evidence, what is evident is that the Esteem car, which was insured with the Oriental Insurance Company Limited only tried to cross the Highway turning from Salem-Coimbatore Highway into Thuduppathi road and in that process, in the middle of the road, the vehicle collided with the Swift car, insured with the appellant/insurance company. When someone tries to cross the National Highway, the said person should be cautious enough to see that while turning, no vehicle passes, to avoid the accident. More responsibility is cast upon the person, who tries to cross the National Highway. It does not mean that the other vehicle, which is coming in the National Highway can go speedily, rashly and negligently. Comparatively, the responsibility is more on the driver, who tries to cross the National Highway. Therefore, there is contributory negligence on the part of the driver of the Esteem car in which the deceased travelled and insured with the Oriental Insurance company Limited. Even in the absence of any rebuttal evidence, in view of Ex.P.2-Rough sketch, this Court could easily visualize that the accident occurred because of the rash and negligent driving of both the vehicles and both are equally responsible for the accident (i.e.,) in 50:50 ratio.

CMA No.2895 of 2017:

4. In this case, the deceased was an agriculturist. Though the claimants, claimed the deceased was earning a sum of Rs.10,000/-, the Tribunal took only Rs.6,000/- as monthly income and has added 30% towards future prospects and awarded a total compensation of Rs.9,71,000/-, the Honourable Supreme Court in

the judgment delivered in Syed Sadiq Vs.United India Insurance Company, reported in 2014 (1) TNMAC 459, fixed the monthly income at Rs.6,500/- for a vegetable vendor, who sustained injuries in the accident which occurred in the year 2008 whereas in the present case, the accident occurred on 26.12.2011 and the inflation index published by the Central Board of Direct Taxation for the purpose of calculating the income has to be taken note of. As per the above said index, the cost of inflation index for the year 2007-2008 is 129 and for the year 2011-2012 is 134 and the notional income of the deceased shall be fixed in the following method:

The notional income fixed by the Hon'ble Supreme Court of India for the vegetable vendor i.e., Rs.6,500/- during the year 2008	X	Cost of Inflation Index for the year 2011-2012 / Cost of inflation index for the year 2007-2008

(i.e.,) 6500 x 184/129 = 9271.31, Rounded off to Rs.9,270/-

5.Therefore, the notional income of the deceased after applying inflation index will be at Rs.9,270/-. Therefore, this Court re-determines the monthly income from Rs.6,000/- to Rs.9,270/-.

6. As per Ex.P.6-Post Mortem Certificate, the age of the deceased is 43 years. Since the age of the deceased is 43 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), 25% has to be added towards future prospects. After adding 25% towards future prospects, the monthly income would be at Rs.12,051/- (Rs.9,270/- + 25% of Rs.9,270 /-).

7. Since the size of the family is 2, the Tribunal rightly deducted 1/3rd towards personal expenses and the same is confirmed. After deducting 1/3rd towards personal expenses, the monthly income would be at Rs.8,034/- (Rs.12,051/- (-) 1/3rd of Rs.12,051/-)

8. 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), the appropriate multiplier is 14 as the age of the deceased is 43 years. Therefore, the loss of income would be at Rs.13,49,712/- (Rs.8,034/- x 12 x 14).

9.Loss of Consortium:

The Tribunal has awarded a sum of Rs.50,000/- 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/-.

10.Loss of love and affection:

The Tribunal has awarded a sum of Rs.25,000/- under this head to the child/2nd respondent/2nd claimant, who is a minor, which is very low. Therefore, the same is enhanced to Rs.75,000/-.

11.Transportation:

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

12.Funeral expenses:

The Tribunal has awarded a sum of Rs.10,000/- under this head, the same is enhanced to Rs.15,000/-.

13.Loss of Estate:

The Tribunal has awarded a sum of Rs.2,500/- towards loss of estate, 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 enhanced to Rs.15,000/-.

Head	Amount (Rs.)
Total loss of income	1349712
Loss of consortium	40000
Loss of love and affection	75000
Transportation	10000
Funearl expenses	15000
Loss of estate	15000
	1504712

14.Hence, the total compensation payable in this case is Rs.15,07,712/- rounded off to Rs.15,08,000/-

15.The interest awarded by the Tribunal at the rate of 7.5% per annum is unaltered. Out of the award amount the claimants 1 and 2 are entitled to get equal share.

CMA No.2896 of 2017:

16.In this case also, the deceased was an agriculturist, aged about 39 years. The Tribunal in the absence of any proof determined the monthly income at Rs.6,000/-. Though the claimants, claimed a sum of Rs.10,000/- as the monthly income of the deceased, the Tribunal took only Rs.6,000/- as monthly income and has added 30% towards future prospects and awarded a total compensation of Rs.9,71,000/-. The Honourable Supreme Court in the judgment delivered in Syed Sadiq Vs. United India Insurance Company, reported in 2014 (1) TNMAC 459, fixed the monthly income at Rs.6,500/- for a vegetable vendor, who sustained injuries in the accident which occurred in the year 2008. Whereas in the present case the accident occurred on 26.12.2011 and taking note of the inflation index published by the Central Board of Direct Taxation for the purpose of calculating the income, the monthly income would come to Rs.9,270/-. Therefore, this Court re-determines the monthly income from Rs.6,000/- to Rs.9,270/-.

17.As per Ex.P.10-Post Mortem Certificate, the age of the deceased is 39 years. Since the age of the deceased is 39 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), 40% has to be added towards future prospects. After adding 40% towards future prospects, the monthly income would be at Rs.12,978/- (Rs.9,270/- + 40% of Rs.9,270/-)

18.Since the size of the family is 3, the Tribunal righlty deducted 1/3rd towards personal expenses and the same is confirmed. After deducting 1/3rd towards personal expenses, the monthly income would be at Rs.8,652/- (Rs.12,978/- (-) 1/3rd of Rs.12,978/-)

19.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), the appropriate multiplier is 15 as the age of the deceased is 39 years. Therefore, the loss of income would be at Rs.15,57,360/- (Rs.8,652/- x 12 x 15).

20.Loss of consortium:

The Tribunal awarded a sum of Rs.50,000/- 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/-.

21.Loss of love and affection:

The Tribunal awarded a sum of Rs.30,000/- under this head, which is very low. Therefore the same is enhanced to

Rs.1,00,000/-

22.Transportation:

The Tribunal awarded a sum of Rs.10,000/- under this head, the same is confirmed.

23.Funeral expenses:

The Tribunal awarded a sum of Rs.10,000/- under this head, the same is enhanced to Rs.15,000/-.

24.Loss of Estate:

The Tribunal awarded a sum of Rs.2,500/- towards loss of estate, 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 enhanced to Rs.15,000/-.

Head	Amount (Rs.)
Total loss of income	1557360
Loss of consortium	40000
Loss of love and affection	100000
Transportation	10000
Funearl expenses	15000
Loss of estate	15000
	1737360

25.Hence, the total compensation payable in this case is Rs.17,37,360/- rounded off to Rs.17,38,000/-

26.The interest awarded by the Tribunal at the rate of 7.5% per annum is unaltered. Out of the award amount the 1st claimant is entitled to Rs.7,38,000/- and the minor claimants 2 and 3 are entitled to Rs.5,00,000/- each.

27.Even though the appeal has been preferred by the insurer of Swift car, namely, Royal Sundaram Alliance Insurance Company Limited, based on the available evidence, this Court re-determines the liability as 50% on appellant insurance company and 50% on Oriental Insurance Company, insurer of the Esteem Car.

28.Though the appeals have been preferred by the insurance company, the facts and circumstances enable this Court to enhance the compensation, invoking Order 41 Rule 33 of CPC and Section 151 of CPC and Article 227 of Constitution of India. The provisions of the Motor Vehicles Act are benevolent in nature and what is required to be awarded is just and reasonable compensation. Therefore, even in the absence of appeal/cross-appeal by the claimants, this Court has got power and jurisdiction to enhance the compensation, which has been recognised by the Honourable Supreme court in Nagappa V. Gurdayal Singh reported in 2004 (2) TN MAC 398 (SC). Therefore, in an endevour to do complete justice, this Court has enhanced the compensation.

29.Since the liability is fixed both on the appellant/insurance company as well as Oriental Insurance Company equally, both the parties are directed to pay the amount equally.

16.The appellant/insurance company as well as Oriental Insurance Company are directed to deposit their respective share of award amount, in respect of each of the appeals, along with interest and costs as per the modified award passed by this Court, 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.

30.CMA.No.2895 of 2017

On such deposit being made, the Tribunal is directed to transfer the share of the 1st claimant along with interest and costs to her bank account through RTGS within a period of one week thereon. As far as minor 2nd claimant is concerned, her share shall be deposited in interest bearing Fixed Deposit in any one of the Nationalised Banks, till she attains majority. The 1st claimant/mother is permitted to withdraw interest accruing on such deposit once in three months.

31.CMA.No.2896 of 2017

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 bank accounts through RTGS within a period of one week thereon. As far as minor 3rd claimant is concerned, her share shall be deposited in interest bearing Fixed Deposit in any one of the Nationalised Banks, till she attains majority. The 1st claimant/mother is permitted to withdraw interest accruing on such deposit once in three months.

32.Accordingly, these appeals are dismissed, enhancing the award of the Tribunal from Rs.9,71,100 to Rs.15,08,000/- with interest in CMA.No.2895/2017 and enhancing the award of the Tribunal from Rs.11,82,500/- to Rs.17,38,000/- in CMA.No.2896/2017. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True copy//

Sub Assistant Registrar

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To

1)The IV Additional District Judge,
(Motor Accident Claims Tribunal)
Erode at Bhavani.

2.The Section Officer,
VR Section, High court,
Madras.

+1cc to Mr.M.krishnamoorthy, Advocate SR.No.43961
+2cc to Mr.S.Arun Kumar, Advocate SR.No.44515
+1cc to Mr.Ma.P.Thangavel, Advocate SR.No. 44873

C.M.A. Nos. 2895 and 2896 of 2017

EV(CO)
GN(27/08/2018)