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.No.2989 of 2017

The Oriental Insurance Company Limited,
No.116, Prakasam Salai, Broadway Road,
Chennai. ... Appellant/2nd Respondent

Vs

1.S.Rajeswari
2.K.Sampath
3.Kanaga
4.P.Muthu
... Respondents/Petitioners 1 to 3 & 1st Respondent

PRAYER : Civil Miscellaneous Appeal preferred against the Judgment and Decree passed by the Motor Accident Claims Tribunal (Special Sub Court No.2) at Madras in MCOP.No.4692 of 2014 dated 30.06.2017.

For Appellant : Mr.S.Manohar

For Respondents: Mr.T.G.Ravichandran for RR 1 to 3

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 insurance company against the award of the Rs.39,06,500/- as compensation for the death of one Sangeeth Kumar, aged about 23 years, who was doing business in Fast Foods and earning about Rs.25,000/- per month, in the accident, which occurred on 30.05.2014, when the victim was standing on the left side of the Dindigul-Trichy High road near J.J.College, Enamkulathur, he was hit down by a lorry insured with the appellant/insurance company, driven rash and negligently.

2.Heard Mr.S.Manohar, learned counsel appearing for the appellant/insurance company and Mr.T.G.Ravichandran, learned counsel appearing for the respondents/claimants.

3.The only question that is to be decided in this appeal is with regard to the quantum, as there is no appeal filed by the insurance company challenging the finding on negligence aspect.

4.According to Mr.Manohar,the Tribunal erroneously relied upon the income-tax return filed by the deceased for the year 2011-12, especially when he died on 30.05.2014. The previous years 2012-13 and 2013-14 have not been filed and therefore, the income determined based on Ex.P.16 income-tax return, is erroneous. Further, he would find fault with the award of the Tribunal with regard to the amounts granted under the heads of love and affection, loss of estate, funeral expenses, etc. and therefore, he seeks to reduce the amount.

5.On the other hand, the learned counsel for the respondents/claimants would support the award passed by the Tribunal.

6.A close scrutiny of the records, especially, Ex.P.11, certificate issued by the Government of Tamil Nadu to the business of the deceased and Exs.P.12 and P.13, the certificate of registration of the Express Foods run by the deceased, would prove that the petitioner was running a "maintenance services of communication equipment" as per Ex.P.11 and also running M/s.SS Foods, dealing with foods such as Burger & Pizza, as per Exs.P.12 and P.13. As per Ex.P.16, the deceased had filed Income Tax Returns for the years 2010-11 and 2011-12, which would show that his income was Rs.2,05,466/- for the year 2010-11 and his income has been increased to Rs.2,40,466/- in the year 2011-12. Therefore, the Tribunal has rightly determined the annual income of the deceased at Rs.2,40,466/- and the same is confirmed.

7.The Tribunal, as per the law which was in force at the time of passing of the award, fixed 50% for the future prospects, whereas as per the Constitution Bench's judgment of the Hon'ble 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, as the deceased was privately employed or self-employed. Thus, if 40% is added towards future prospects, the annual income would be Rs.3,36,652/- [i.e., Rs.2,40,466/- + Rs.96,186/- (40% of Rs.2,40,466/-)], rounded off to Rs.3,36,650/-.

8.In the aforesaid yearly income, a sum of Rs.13,600/- is to be deducted towards income tax and if Rs.13,600/- is deducted, the yearly income would be Rs.3,23,050/-.

9.The deceased was a bachelor and therefore, 50% has to be deducted towards personal expenses, as rightly adopted by the Tribunal. Thus, loss of contribution to the family comes to Rs.1,61,525/- and accordingly, the annual income of the deceased would be Rs.1,61,525/-.

10.The age of the deceased as per Ex.P.23 (I.D. Card) is 23 and the proper multiplier of 18 has been rightly adopted by the Tribunal. If multiplier 18 is applied, the loss of income would be Rs.29,07,450/- (Rs.1,61,525 x 18).

11.The Tribunal awarded a sum of Rs.3,00,000/- towards love and affection and the same has to be reduced to Rs.1,00,000/-, which amount is akin to the amount awarded towards loss of consortium to the spouse.

12.Rs.10,000/- awarded towards extra nourishment, Rs.5,000/- towards damage to clothes and Rs.10,000/- towards attender charges are all confirmed.

13.Rs.50,000/- awarded towards funeral expenses is reduced to Rs.15,000/- and similarly, Rs.1,00,000/- towards loss of estate is reduced to Rs.15,000/-.

14.Rs.1,55,184/- awarded by the Tribunal towards medical expenses as per Exs.P.27 and P.28 is confirmed. Rs.30,000/- awarded towards travel expenses also stands confirmed.

15.Thus, the total compensation comes to Rs.32,47,634/-, which is rounded off to Rs.32,48,000/-.

16.The Tribunal has rightly awarded interest at the rate of 7.5% per annum.

17.In the result, this appeal is partly allowed, reducing the award of the Tribunal from Rs.39,06,500/- to Rs.32,48,000/- with interest. Out of the aforesaid award amount of Rs.32,48,000/-, the 1st and 2nd respondents/claimants are each equally entitled to Rs.15,50,000/- and the balance amount of Rs.1,48,000/- has to be paid to the third respondent.

18.The Insurance company is directed to deposit the compensation 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 along with proportionate interest and costs to their respective bank accounts through RTGS within a period of one week thereon. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

sra

To
The Special Subordinate Court No.2,
(Motor Accident Claims Tribunal)
Dharmapuri.

Copy to:

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

+1cc to Mr.S.Manohar, Advocate sr.no.44188
+1cc to Mr.T.G.Ravichandran, Advocate sr.no.43897

C.M.A.No.2989 of 2017

nr 02/08/2018