IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.04.2018

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN
AND
THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

C.M.A. No. 309 of 2017
&
C.M.P. Nos. 2229 of 2017 & 789 of 2018

Reliance General Insurance Company Ltd.,
Balmer Lawrie House, No. 628,
Anna Salai, Teynampet,
Chennai - 600 018. ..Appellant/2nd Respondent

Vs.

1. Kalaiselvi
2. C. Gopal
3. Shanmugapriya
4. Sangeetha
5. Anandan ..Respondents/Petitioners and 1st Respondent

Prayer: Civil Miscellaneous Appeal as against the judgment and decree dated 17.08.2016 passed in M.C.O.P. No. 142 of 2013 by the Motor Accidents Claims Tribunal, Special District Court, Salem.

For Appellant : Mr.S. Arunkumar
For Respondents : Mr.S.B. Viswanathan for R1 to R4

J U D G M E N T

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

This appeal has been preferred by the Insurance Company as against the award of Rs.48,52,370/- granted in favour of respondents 1 to 4/claimants for the death of one Dheenadayalan, aged about 26 years, Software Engineer, allegedly earning about Rs.63,317/- per month, in the accident which occurred on 14.10.2011, when the two-wheeler bearing Registration No. TN-30-AA-6798, driven by him, was hit from behind, by a JCB Poclain bearing Registration No. TN-02-AB-1418, belonging to the 5th respondent and insured with the appellant, driven in a rash and negligent manner.

2. Heard Mr.S. Arunkumar, learned counsel for the appellant and Mr.S.B. Viswanathan, learned counsel for respondents 1 to 4.

3. Mr.S. Arunkumar, learned counsel for the appellant would submit that though P.W.2 was examined as an eyewitness to the occurrence, the said witness was coming behind the Poclain Vehicle, when the accident occurred and there was no possibility of P.W.2 witnessing the accident whereas the driver of the JCB Poclain has been examined as R.W.1 , who had categorically stated that he did not hit the two-wheeler and it was some other vehicle, which hit the two-wheeler.

4. However, a perusal of the records would show that Ex-P1 FIR has been registered against the driver of the Poclain Vehicle. P.W.2, eye-witness has categorically stated that the accident occurred because of the rash and negligent driving of the Poclain, which hit the two-wheeler driven by the deceased resulting in his death. Eventhough the Criminal Court acquitted the driver of the Poclain, what is required to be proved before the Criminal Court is beyond doubt whereas before the Tribunal, it is preponderance of probabilities. Moreover, the Criminal Court's judgment is not binding upon the Tribunal. That apart, the evidence of R.W.1 is not in consonance with the counter filed by the respondent Insurance Company. In the counter, it is not denied that the Poclain vehicle was involved in the accident whereas for the first time in evidence, R.W.1 deposed that his vehicle was not involved in the accident and some other vehicle was involved. Therefore, the Tribunal rightly did not believe R.W.1's evidence and took into consideration P.W.2's evidence and came to the conclusion that the accident ocurred because of the rash and negligent driving of the Poclain Vehicle. Therefore, the said finding cannot be interfered with.

5. With regard to the quantum, the Tribunal took Rs.34,000/- as the monthly income eventhough Ex-P6 would prove that he was drawing a sum of Rs.63,317/- per month. The Tribunal found that Rs.34,000/- is the standard monthly income and the balance amounts are incentives and allowances. That apart, Rs.4,17,176/- had been quoted in the said certificate as yearly income and therefore, the Tribunal rightly took the monthly income of the deceased at Rs.34,765/-.

6. Though the Tribunal took 50% towards "Future Prospects", as per the judgment of the Constitution Bench of the Honourable Supreme Court in Pranay Sethi's case (2017 ACJ 2700), 40% has to be added towards "Future Prospects" since the deceased was employed in a private company and the employment cannot be said to be a permanent one as that of a Government Job. Therefore, adding 40% towards "Future Prospects", the "Total Monthly Income" of the deceased comes to,

Monthly Income :: Rs.34,765/-
Add: 40% towards "Future Prospects"
:: Rs.34,765/- + 40%(Rs.34,765/-)

Total Monthly Income	::	Rs.34,765/- (+) Rs.13,906/-
	::	Rs.48,671/-
Annual Income	::	Rs.48,671 x 12
	::	5,84,052/-

As per the income tax rates applicable at the relevant point of time, the exemption limit was upto Rs.2 lakhs and therefore, for the balance yearly income of Rs.3,84,052/-, which is the taxable income, 10% deduction has to be made towards income tax. Therefore, deducting the same, the annual income of the deceased would be (Rs.5,84,062/- (-) 10% (3,84,052/-) = Rs.5,45,656.8

Monthly Income	::	Rs.5,45,656.8/12
	::	Rs.45,471.4

Since the deceased was a bachelor, 50% has to be deducted towards "Personal Expenses". Therefore, the "Monthly Contribution of the deceased to his family" would be,

Monthly Contribution	::	Rs.45,471.4 (-) 50% (Rs.45,471.4)
	::	Rs.45,471.4 (-) (Rs.22,735.7)
	::	Rs.22,735.7
Annual Contribution	::	Rs.22,735.7 x 12

The Tribunal rightly took multiplier 17 following the judgment of the Honourable Apex Court in Sarla Verma and Others V. Delhi Transport Corporation and Another reported in 2009 (6) SCC 121, as the deceased was aged about 26 years, which is proved by Exs-P7 to P9 and P11. Applying the said multiplier, "Loss of Income" is arrived at as follows:

Loss of Income	::	Rs.22,735.7 x 12 x17
	::	Rs.46,38,082.8
	::	Rs.46,38,083/-

The sum of Rs.25,000/- awarded towards "Funeral Expenses" is reduced to Rs.15,000/-, in the light of Pranay Sethi's case (2017 ACJ 2700). The sum of Rs.40,000/- awarded towards "Loss of love and affection" to respondents 1 to 4 @ Rs.10,000/- each is confirmed. No amount was quantified towards "Loss of Estate" as well as "Transport Charges". Hence, Rs.15,000/- and Rs.10,000/- are awarded under the said heads respectively. The total compensation payable to the claimants works out to,

Loss of Income	::	Rs.46,38,083/-
Loss of love and affection	::	Rs. 40,000/-
Funeral Expenses	::	Rs. 15,000/-
Loss of Estate	::	Rs. 15,000/-
Transport Charges	::	Rs. 10,000/-
Total	::	Rs.47,18,083/-

The rate of interest awarded by the Tribunal @ 7.5% per annum remains unaltered. Out of the said amount of Rs.47,18,083/-, the 1st respondent would be entitled to Rs.20,00,000/-, the 2nd respondent would be entitled to Rs.17,18,083/- and the 3rd and 4th respondents would be each entitled to Rs.5,00,000/-.

7. Thus, the Civil Miscellaneous Appeal is partly allowed reducing the compensation awarded by the Tribunal from Rs.48,52,370/- to Rs.47,18,083/-. No costs. Connected C.M.Ps are closed.

8. The appellant Insurance Company is directed to deposit the entire award amount, with interest and costs, if not already deposited, as per the modified award passed by this Court,, 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 the claimants to their respective bank accounts through RTGS within a period of one week thereon.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

nv

To

The The Motor Accident Claims Tribunal
(Special District Court),
Salem.

Copy TO
The Section Officer,
VR Section, High Court,
Madras.(2 Copies)

+1cc to Mr.Arun Kumar, Advocate SR.No.26302
+1cc to Mr.Viswanathan, Advocate SR.No.25888

C.M.A. No. 309 of 2017

MG(CO)
GN(19/07/2018)