THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.06.2018

CORAM :

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A. No.3184 of 2017 and CMP No.19562 of 2017
and CMP.No.2763 of 2018

M/s.United India Insurance Co.Ltd.,
77, Oriental Complex,
AA Street, Salem - 1. ...Appellant/2nd Respondent

Vs.

1. M.Baby
2. M.Chandrakala
3. M.Thenmozhi
4. M.Sreemathi ...1 to 4th Respondents/Petitioners
5. M.Vasanthamalathi
6. S.Kumerasan
7. United India Insurance Co.Ltd.,
   104-A, Peramnur Main Road,
   Peramnur, Salem - 7. ... 5 to 7 Respondents/
   1,3 & 4th Respondents

Prayer: Civil Miscellaneous Appeal is filed to set aside the decree and judgment dated 06.04.2017 made in MCOP. No.1 of 2016 on the file of Motor Accident Claims Tribunal, Special District Court, Salem.

For Appellant : Mr.S.Arun Kumar

For Respondents : Mr.R.Thangavel for R1 to R4

JUDGMENT

(Judgement of this Court made by Krishnan Ramasamy.J.)

Aggrieved over the award passed by the Motor Accident Claims Tribunal, Special District Court, Salem in MCOP. No. 1 of 2016 dated 06.04.2017, the United India Insurance Co.Ltd.,/appellant herein, who is the second respondent in the above said MCOP has filed this Appeal to set aside the award of a sum of Rs.1,12,62,008/- passed by the Claims Tribunal as erroneous.

2. The brief facts of the case are as follows:-

On 12.11.2015 when the deceased (M.Prakash) was travelling in a car driven by its driver bearing Registration No.TN 30 AR 5319, on the Karur to Dindigul NH 7 road at about 11.15 a.m. While proceeding in Aravakurichi over bridge, the driver of the car drove it in a rash and negligent manner without following any traffic rules and regulations with great speed and all of a sudden the driver of the car had lost his control and crossed the centre divider and hit against the opposite vehicle TN-39-AS-6066 Chevrolet Tavera Car and caused the accident.

The deceased who sat near the driver thrown out of the car and sustained fatal injuries and died on the spot. Under these circumstances the Motor Accident Claims Tribunal, Salem passed an award in MCOP.No.1 of 2016 to a sum of Rs.1,12,62,008/-. Now the appellant herein has preferred the present appeal to set aside the award on the issue of quantum of compensation awarded by the Tribunal.

3. The Tribunal had come to the conclusion that the accident occurred due to the rash and negligent driving of the driver of the vehicle bearing registration No.TN 30 AR 5319, Mahendira XUV 500. In the present appeal there is no challenge on the issue of negligence. Post mortem report of the deceased was marked as Ex.P.2 and the death certificate was marked as Ex.P.7 through P.W.1. The age of the deceased was mentioned 32 years in the post mortem report and in the death certificate. Therefore the Tribunal has rightly taken the age of the deceased as 32 years while determining the compensation for the respondents 1 to 4 in the present appeal. At the time of death, the deceased was working as II Additional District Munsif, Salem. To substantiate this contention PW1 produced Ex.P.6 salary certificates, Ex.P.5 B.L., degree certificate and Ex.P.18 appointment order of the deceased. On the perusal of Ex.P.5, Ex.P.6 and Ex.P.18 it clearly establish that the deceased Prakash was drawing the salary of Rs.65,281/- for the month of October 2015. Therefore the Tribunal had rightly took the income of the deceased as Rs.65,281/-. Since the age of the deceased was 32 years, the Tribunal has rightly added 50% of the income of the deceased for future prospects by following the judgment in the case of National Insurance Company Limited Vs. Pranay Sethi reported in 2017-13 SCALE 12. Therefore the monthly income of the deceased along with future prospects was determined by the Tribunal as Rs.97,921/- (Rs.65,281/- + Rs.32,640/-). Further the Tribunal had rightly deducted 1/3rd of the total income along with future prospects for the purpose of personal expenses of the deceased. While deducting 1/3rd for the deceased Bachelor for his personal expenses the Tribunal had taken into consideration the Widowed mother and three dependant sisters. Further Tribunal in this

regard had followed the principles laid down in Sarla Verma and others Vs.Delhi Transport Corporation and another reported in 2009 ACJ 1298 SC. Therefore the monthly income of the deceased for the purpose of determining the compensation fixed by the Tribunal is Rs.97,921/- out of which 1/3rd was deducted for the personal expenses of the deceased. The balance monthly income i.e, 2/3rd of Rs.65,280/- was determined as loss of income for the family. Hence, the loss of income for the family for one year will be a sum of Rs.7,83,360/- = (Rs.65,280/- x 12) out of which a sum of Rs.84,172/- (Rs.81,672/- + Rs.2,500/-) was deducted towards income tax and professional tax of the deceased. After deducting the above said tax amount the loss of income for the purpose of determining the compensation will be a sum of Rs.6,99,188/- (Rs.7,83,360 - Rs.84,172)

4. The deceased was 32 years old at the time of accident therefore following the judgement in the case of Sarla Verma and others Vs.Delhi Transport Corporation and another reported in 2009 ACJ 1298 SC, the multiplier 16 will be applicable for the purpose of calculation of loss of income. Based on the multiplier 16 loss of income for the family of the deceased will be a sum of Rs.1,11,87,008/- (Rs.6,99,188x16). The Tribunal also rightly fixed the loss of income for the deceased family as Rs.1,11,87,008/-. Therefore we uphold the calculation of the Tribunal with regard to the loss of income to the family of the deceased. Further the Tribunal had fixed Rs.25,000/- towards Funeral expenses, however as held in the National Insurance Company Limited Vs. Pranay Sethi reported in 2017-13 SCALE 12 we inclined to fix a sum of Rs.15,000/- towards funeral expenses.

5. The Tribunal had fixed a sum of Rs.20,000/- towards love and affection for the first respondent and Rs.30,000/- for the respondents 2 to 4. However we feel that the amount of Rs.20,000/- awarded towards love and affection to the first respondent is very low, therefore we refix it to a sum of Rs.30,000/-. However, we uphold a sum of Rs.30,000/- awarded by the Tribunal towards love and affection to the respondents 2 to 4.

6. Hence the total compensation payable to the claimants is as hereunder.

Head	Amount (Rs.)
Loss of Dependency	Rs.1,11,87,008/-
Funeral expenses	Rs.15,000/-
Loss of love and affection to the 1st respondent	Rs.30,000/-

Head	Amount (Rs.)
Loss of love and affection to the respondents 2,3 & 4	Rs.30,000/-
Total	Rs.1,12,62,008/-

7. Accordingly, the Insurance Company is directed to deposit the entire amount, with interest and costs directly through NEFT or RTGS as directed by the Tribunal, after adjusting the amount, if any, already deposited, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the respondents 1 to 4 are permitted to withdraw their respective shares, from the total compensation payable to them, as per the modified award passed by this Court within a period of two weeks thereafter in the ratio fixed by the Tribunal.

8. In the result the Civil Miscellaneous Appeal is dismissed and the award passed by the Tribunal to the tune of Rs.1,12,62,008/- as stated in paragraph no.6 above. The said amount shall carry the same rate of interest as awarded by the Tribunal namely 7.5% per annum and the apportionment shall be as ordered by the Tribunal. Consequently, the connected miscellaneous petition is also closed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

dpq
To

1.The Special District Court,
Motor Accidents Claims Tribunal,
Salem.

2.The Section Officer,
VR Section, High Court,
Madras-104.

+1cc to M/S.S.Arunkumar, Advocate Sr.37101
+1cc to Mr.C.Anbu, Advocate Sr.37206

C.M.A. No.3184 of 2017
and CMP.No.2763 of 2018

sj[co]
srg 20/08/2018