IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.M.A. No.3221 of 2017
and
C.M.P.No.19972 of 2017

IFFCO-TOKIO
General Insurance Company Ltd.,
Represented by its General Manager,
No.128, Habibullah Road,
Chennai-17.

... Appellant/ 2nd Respondent

-Vs-

1. W.D.Samuvel Rajkumar
2. Minor.Hosan Nesa Hilda
3. Hydrotec Engineering India Private Limited,
   Represented by its Managing Director,
   Situated at No.129, 1st Main Road,
   Anna Nagar, Chennai-102.

(Minior is Represented by her
NF/Father W.D.Samuvel Rajkumar)

... Respondents/1&2 Claimants/1st Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Decreetal Order and Order made in M.C.O.P.No.246/2014 dated 04.02.2017 on the file of the Motor Accident Claims Tribunal Special Sub Judge (MCOP), Tiruvannamalai.

For Appellant : Ms.K.Saraswathi

For Respondents: Mr.M.Velu
for M/s.A.M.Sridharan for R1 & R2
Mr.E.Kannadasan for R3

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J U D G M E N T

[Judgment of the Court was delivered by R.SUBRAMANIAN, J.]

The Insurance Company challenges the award of a sum of Rs.65,15,232/- (Rupees Sixty Five Lakhs Fifteen Thousand Two Hundred and Thirty Two only) as compensation for the death of Tmt.Jerlin Rose Suria Prabha, aged 48 years in a road accident that occurred on 15.03.2014. The claimants are the husband and daughter of the deceased.

2. According to the claimants, while the deceased was crossing the service lane opposite to Chennail Silks on the Chennai-Bangalore Highway in Vellore Town, the car belonging to the third respondent herein, bearing Registration No.TN-02-AB-2622 insured with Appellant/Insurance Company driven in a rash and negligent manner by its driver, dashed against her, resulting in the accident. As a result of the accident, the deceased suffered grievous injuries and succumbed to the injuries. Claiming that the deceased was employed as Assistant Professor in Government Arts College, Tiruvannamalai, claimants sought for compensation of Rs.4,00,00,000/-.

3. The claim petition was resisted by the Insurance Company inter alia contending that the accident had occurred due to the negligence of the deceased inasmuch as she attempted to cross the road without looking for on-coming vehicles. It was also contended that the age, educational qualification and salary of the deceased have been inflated in order to get more compensation.

4. Based on the FIR as well as the charge sheet filed in Crime No.117 of 2014 by the Vellore North Police Station, the Tribunal concluded that the accident occurred due to the rash and negligent driving on the part of the car driver.

5. On the question of quantum, the Tribunal found that the deceased was drawing a salary of Rs.58,158/- (Rupees Fifty Eight Thousand One Hundred and Fifty Eight only) at the time of the accident. The Tribunal added 30% towards future prospects, deducted 20% towards income tax. Deducting 1/3rd towards personal expenses, fixed the monthly loss of dependency at Rs.40,322/- (Rupees Forty Thousand Three Hundred and twenty two only). Applying a multiplier of '13' it arrived at the monetary loss at Rs.62,90,232/- [40,322 X 12 X 13 = 62,90,232]. The Tribunal also awarded a sum of Rs.1,00,000/- towards loss of consortium to the husband, Rs.1,00,000/- towards loss of love and affection to the second claimant-minor daughter/second respondent herein and a sum of Rs.25,000/- towards Funeral Expenses. The Tribunal thus awarded a total sum of Rs.65,15,232/-. Aggrieved by the said award, the Insurance Company has come forward with this appeal.

6. We have heard Ms.K.Saraswathi, learned counsel appearing for the Insurance Company, Mr.M.Velu, learned counsel appearing for the respondents 1 and 2/ claimants

and Mr.E.Kannadasan, learned counsel appearing for the third respondent.

7. Ms.K.Saraswathi, learned counsel appearing for the Insurance Company/ appellant submitted that the Tribunal erred in fixing the 100% negligence on the part of the car driver. On the admitted facts i.e., the deceased attempted to cross the road when the accident took place, the Tribunal ought to have fixed some percentage towards contributory negligence. She would further contend that the Criminal Court had acquitted the driver of the Car finding that the deceased was responsible for the accident. She would also submit that the quantum of compensation awarded i.e. a sum of Rs.1,00,000/- under the head of loss of consortium to the first claimant/first respondent herein and a sum of Rs.1,00,000/- towards the loss of love and affection to the second minor claimant/second respondent herein are high.

8. We have considered the rival submissions.

9. As regards the negligence, the Tribunal has relied upon the FIR and Charge Sheet to conclude that the driver of the car was negligent. We find that the judgment of the Criminal Court has concluded that the deceased has contributed and invited the accident. No doubt the conclusion arrived at by the Criminal Court cannot be a binding factor in deciding the question of negligence.

10. We, however, take into account that the driver of the car has contributed to some extent to the accident and the manner in which the accident had happened has to be considered in deciding the quantum of negligence. It is in evidence that the accident had occurred when the deceased attempted to cross the service lane. The Tribunal has found that the deceased and others, had crossed the road, after parking their car. Since it was a service road/lane, we find that the entire negligence cannot be fastened neither on deceased nor on Car driver. It is claimed that the deceased attempted to cross the road without looking for on-coming vehicles. The Insurance Company has not examined any person to prove the said plea. The rough sketch, which has been filed as Ex-R1, would show that the location of the accident is on the service road/lane and not on the National Highway. We are, therefore, of the considered opinion that the deceased cannot be held 100% negligent. From the rough sketch as well as the evidence available on record we conclude that the deceased had contributed to the accident to an extent of 10%. Therefore, the said 10% of the compensation has to be deducted from the compensation arrived at.

11. On the quantum, we find that the salary drawn by the deceased was not in dispute. The monthly income of the deceased was Rs.58,158/- (Rupees Fifty Eight Thousand One Hundred and Fifty Eight only) as per the Salary Certificate. The Tribunal deducted 20% as income tax, after adding future prospects. The deduction of the income tax should have been done before adding the future prospects, since the amount of future prospects is only notionally added for the purposes of arriving at the just compensation. We are therefore of the opinion that the deduction of income tax must always precede the addition of future prospectus. If we deduct 20% towards income tax, the balance amount would be at Rs.46,526/-. Adding 30% of Rs.58,158/- towards future prospects, which would be Rs.17,447/-. The monthly income for the purposes of determination of loss of dependency would be Rs.63,973/-. If 1/3rd is deducted from the monthly income towards personal expenses, the monthly loss of dependency would be Rs.42,649/-. The deceased was aged about 48 years at the time of accident and the appropriate multiplier would be 13. Thus, the loss of dependency will be Rs.42,649 X 12 X 13 = Rs.66,53,244/-. The Tribunal awarded a sum of Rs.1,00,000/- towards loss of consortium and Rs.1,00,000/- towards loss of love and affection, which is on the higher side. In view of the subsequent pronouncement of the larger bench of the Hon'ble Supreme Court in National Insurance Co. Ltd Vs. Pranay Sethi and others reported in 2018 (1) LW 331, the compensation that could be awarded under the conventional heads could only be at Rs.40,000/- for loss of consortium and Rs.40,000/- for loss of love and affection. The Tribunal has not awarded any amount towards loss of estate and transport. While sustaining the award amount of Rs.25,000/- towards funeral expenses, we award a sum of Rs.15,000/- towards loss of estate and a sum of Rs.5,000/- for transport expenses. Thus, the total compensation works out to Rs.67,78,244/-. Since we are able to find that 10% of total compensation of Rs.6,77,824/- is to be deducted towards contributory negligence of the deceased, the compensation payable would be Rs.61,00,419/-.

12. For the foregoing reasons, the appeal is partly allowed, the award of the Tribunal is modified. The total compensation payable is fixed at Rs.61,00,419/- rounded of to Rs.61,00,500/- with 7.5% interest from the date of petition till date of payment. The claimants are entitled to share the compensation amount as per the apportionment made by the Tribunal. The first respondent/husband is entitled to withdraw his share of compensation. The Tribunal is directed to deposit the share of the minor claimant in interest earning Fixed Deposit till she attains majority in any one of the Nationalized Banks. The 1st

respondent, the husband of the deceased will be entitled to withdraw quarterly interest accruing on the Fixed Deposit for the maintenance of the minor daughter. The minor claimant would be permitted to withdraw her share of the compensation, when she attains majority. In the circumstances, there will be no order as to costs in this appeal. Consequently, the connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accident Claims Tribunal,
Special Sub Judge (MCOP),
Tiruvannamalai.

Copy to
The section officer,
VR Section,
High court
Madras

+1cc to Mr.E.Kannadasan , Advocate SR.No.61883 61838
+2cc to Mr.B.Sarath babu , Advocate SR.No. 61838

C.M.A. No.3221 of 2017

ASK(01/11/2018)