IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 23.04.2018

CORAM:

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

C.M.A. No.3421 OF 2017
&
Connected Miscellaneous Petitions

Shriram General Insurance Co. Ltd.,
C/o.Shriram Fortune Solutions Ltd.,
66, Thirumalai Pillai Road,
City Centre Complex,
Near Vani Mahal, T.Nagar,
Chennai - 600 017. .. appellant / 2nd respondent

versus

1.Jayachandran
2.Ranganayaki
3.Anuradha ..respondents 1 to 3/ petitioners

4.R.Jaiganesh .. respondent 4/ 1st respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the order and decree dated 28.04.2017 made in M.C.O.P.No.564 of 2014 on the file of the Motor Accident Claims Tribunal [II Judge, Court of Small Causes], Chennai.

For Appellant : Mr.S.Dhakshnamoorthy
For Respondents : Mr.R.T.Chaari

J U D G M E N T
[Judgment of the Court was delivered by R.PONGIAPPAN, J.]

Aggrieved over the award passed by the Motor Accidents Claims Tribunal, Chennai in M.C.O.P.No.564 of 2014, the appellant herein, who is the second respondent in the claim petition filed this appeal, in which, he is seeking the relief to set aside the order passed by the Claims Tribunal. In the

Claims Tribunal, the respondents 1 to 3 had filed a Claim Petition under Section 166 of the Motor Vehicles Act, in which, they claimed compensation of Rs.40,00,000/-. The respondents 1 and 2 herein are the parents and the third respondent is the sister of the deceased. After elaborate enquiry, the Claims Tribunal awarded compensation of Rs.19,05,000/- with interest at the rate of 7.5% per annum, against which, the present appeal has been preferred.

2. In the Claims Tribunal, the case of the respondents 1 to 3 is as follows:

2.1. On 03.02.2013, at about 00.05 hours, the deceased Lakshmi Narasimhan was riding on his Motor Bike bearing Registration No.PY-01-BR-5670 from Maduravoil to Tambaram by-pass road. When the bike was near to Thiruneermalai Temple, a Eicher Van bearing Registration No.TN-21-K-8458 owned by the fourth respondent insured with the appellant came in a rash and negligent manner from the opposite side and dashed against the vehicle, driven by the deceased, thereby, the deceased sustained fatal injuries and died on the spot.

3. During the time of enquiry, the learned counsel appearing for the appellant vehemently argued that at the time of the accident, the driver, who drove the Eicher Van had driven the vehicle without any valid license. Further without any document for showing the income of the deceased, the Claims Tribunal took the income of the deceased as Rs.10,000/- per month, which is erroneous, thereby, the quantum determined by the Claims Tribunal is an excessive one and he prayed to allow this appeal.

4. Now, on going through the findings arrived by the Claims Tribunal, it is true that the Claims Tribunal has held that during the time of accident, the Eicher Van was driven by the driver without any valid license. Moreover in the Trial Court, in order to prove the same, one Sampath, who is working in RTO Office was examined as R.W.1. Accordingly, the Claims Tribunal categorically proved that the driver of the Eicher Van is not having any valid license. However, the Tribunal after coming to the conclusion that the driver of the vehicle is not having any valid license applying the principles of the judgment in the case of RAMAIYAN vs. CHINNAH AND RELIANCE GENERAL INSURANCE CO. LTD. reported in 2013 [2] TNMAC 535 of this Court ordered for pay and recovery. So, the findings arrived by the Claims Tribunal with regard to the pay and recovery does not have any error in law. So, the first submission made by the learned counsel appearing for the appellant is not a ground to set aside the order passed by the Claims Tribunal.

5. Secondly, on going through the quantum arrived by

the Claims Tribunal it was held that the Tribunal determined the income of the deceased as Rs.10,000/- per month. On the other hand, the first respondent in this case gave evidence that the deceased was working in a private concern and earned Rs.15,000/- per month. In order to dispute the said evidence on the side of the appellant, nobody was examined. However, the Claims Tribunal determined Rs.10,000/- per month only for arriving at the compensation. Now, on going through the documents [Ex.P.16 to Ex.P.23] it shows that the deceased was involved in NCC. Further he got a Certificate in Painting Competition and participated in the Basic Life Support conducted by the Indian Medical Association Tamil Nadu. In the said circumstances, considering the qualification of the deceased, it would be appropriate to determine Rs.12,000/- as monthly income of the deceased.

6. Now, on going through the "Future Prospects", it is necessary to follow the judgment of the Constitution Bench in the case of NATIONAL INSURANCE COMPANY LIMITED vs. PRANAY SETHI AND OTHERS reported in 2017 ACJ 2700, in which, our Honourable Apex Court has held that if a person is self-employed in the age of 40, 40% of the Future Prospects has to be added for calculating the loss of dependency. On going through the mark sheet and the driving license of the deceased, it appears that the deceased was aged 26 years on the date of the accident. Therefore, total monthly income of the deceased comes to,

Total Monthly Income	::	Rs.12,000/- (+) 40% (Rs.12,000/-)
	::	Rs.12,000/- (+) Rs.4,800/-
	::	Rs.16,800/-

7. Now, coming to the point of deduction, it is an admitted fact that the deceased died in the accident without any marriage. So, it is necessary to deduct 50% towards his personal expenses. After deducting 50% towards Personal Expenses, the monthly income of the deceased comes to Rs.8,400/- [Rs.16,800 - 50%].

8. With regard to the multiplier, in the case of SARLA VERMA vs. DELHI TRANSPORT CORPORATION reported in (2009) 6 SCC 121, our Honourable Apex Court has held that if a person is died in the age of 26-30, the appropriate multiplier is 17. In this case as already discussed the age of the deceased at the time of accident was 26 years, hence the appropriate multiplier for calculating the loss of dependency is 17. Accordingly, the pecuniary loss for the family is fixed as follows:

Loss of Income	::	Rs.8,400 x 12 x 17
	::	Rs.17,13,600/-

9. Now, on going through the conventional heads as per the case of NATIONAL INSURANCE COMPANY LIMITED vs. PRANAY SETHI AND OTHERS reported in 2017 ACJ 2700, it is necessary to add Rs.15,000/- towards "Funeral Expenses" and Rs.15,000/- towards "Loss of Estate". Moreover, in this case, the respondents 1 and 2 lost their son in their old age. So, they are in an unsafe position during the last days of their life. The third respondent being the sister of the deceased has lost her brother at a young age, due to that loss, she does not have any support from her parental home till her life time. So, the above loss is nothing but akin to the loss of consortium to the wife. So, this Court has decided to award Rs.1,00,000/- towards Loss of Love and Affection. Accordingly, the claimants / respondents 1 to 3 are entitled to the compensation as follows:

Head	Amount (Rs.)
Loss of Dependency	17,13,600.00
Funeral Expenses	15,000.00
Loss of Estate	15,000.00
Loss of Love and affection	1,00,000.00
Total	18,43,600.00
Rounded off	18,50,000.00

Hence, the compensation arrived by the Claims Tribunal is modified to the extent of Rs.18,43,600/- rounded off to Rs.18,50,000/-. The claimants / respondents 1 to 3 are entitled to equal share.

10. The rate of interest awarded by the Tribunal at 7.5 % per annum remains unaltered. Accordingly, the award of the Tribunal (i.e.,) Rs.19,05,000/- is reduced to Rs.18,50,000/-. The appellant/Insurance Company is directed to deposit the entire award amount along with interest and costs after deducting the amount already deposited, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the said amount to the Bank Account of the respondents 1 to 3 / claimants through RTGS/NEFT within a period of one week.

11. In the result, the Civil Miscellaneous Appeal is disposed of. Consequently, the connected Miscellaneous Petitions are closed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

sri

To

The II Judge, Court of Small Causes
Motor Accident Claims Tribunal
Chennai.

+2cc to Mr.R.T.Chaari, Advocate, S.R.No.30177

C.M.A. No.3421 OF 2017

RSK(CO)
CS/14/06/18