

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.04.2018

CORAM :

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

C.M.A.No.3502 of 2017 and
C.M.P.No.22256 of 2017

The Manager,
M/s.Reliance General Insurance Company Limited,
Motor TP Claims, Reliance Towers,
Haddows Road, Opp. To Sasthribhavan,
Nungambakkam, Chennai 600 034 ... Appellant/2nd Respondent

Vs

1.J.Sobha Rani
2.J.Rohit Rao (Minor)
(2nd respondent minor rept. by mother
and next friend 1st respondent) ... Respondents 1 & 2/Petitioners
3.K.Muthurasu @ Muthuraj ... 3rd Respondent/1st Respondent

PRAYER : Civil Miscellaneous Appeal filed against the Judgment
and Decree made in MCOP.No.102 of 2016, dated 12.04.2017, on the
file of the Motor Accidents Claims Tribunal, Special District
Court, Tiruvallur.

For Appellant : Mr.N.Vijayaraghavan

For Respondents : Mr.Amar D.Pandiya (R1 and R2)
R3 - Exparte

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 Rs.63,47,152/- for the death of one
Mr.Venkateswar Rao, who is the 1st respondent's husband, aged
about 41 years working as Havildar in Indian Army, earning about
a sum of Rs.43,674/-, in the accident which occurred on
15.07.2016, when he was riding his bicycle, which was hit down
by the motorcycle belonging to the 3rd respondent, insured with
the appellant/insurance company.

2.Heard Mr.N.Vijayaraghavan, learned counsel appearing for
the appellant, who would submit that the negligence as well as
quantum are the points to be decided in this appeal. He would

submit that the award amount is on the higher side whereas the learned counsel for the claimants would support the award passed by the Tribunal.

3.A perusal of the records would show that the Tribunal came to the conclusion that the accident occurred because of the rash and negligent driving of the two wheeler. The evidence of RW1 viz., the 3rd respondent herein, reveals that in spite of applying break, the two wheeler hit against the deceased, resulting in falling of the deceased. Therefore, the Tribunal rightly came to the conclusion that due to the rash and negligent driving of the two wheeler, the accident had occurred. Hence the contention raised by the learned counsel appearing for the appellant, disputing the negligence is rejected.

4.As far as the quantum is concerned, it is proved by Ex.P.15, salary slip and Ex.P.14, service register of the deceased that he was earning about Rs.43,674/- per month. Therefore, the annual income of the deceased comes to Rs.5,24,088/- (Rs.43,674/- x 12) from which, income tax has to be deducted. As income tax comes to Rs.29,817/-, after deducting income tax, the annual income comes to Rs.4,94,271/- (Rs.5,24,088/- - Rs.29,817/-).

5.Since the deceased was aged about 41 years, 30% was rightly added by the Tribunal towards future prospects, which is in consonance with the Constitution Bench's judgment of the Honourable Apex Court in National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC). After adding 30% towards future prospects, the annual income of the deceased comes to Rs.6,42,552/- (Rs.4,94,271/- + 30% of Rs.4,94,271/-).

6.1/3rd was rightly deducted by the Tribunal towards personal expenses as the family consists of only two members. After deducting 1/3rd towards personal expenses, the annual contribution of the deceased to his family comes to Rs.4,28,368/- (Rs.6,42,552/- - 1/3rd of Rs.6,42,552/-).

7.As per the judgment of the Honourable Supreme Court in Sarala Verma & Others Vs. Delhi Transport Corporation & another, reported in 2009 (2) TNMAC 1 (SC), the appropriate multiplier for the age of 41 years is "14". Therefore, the loss of income was rightly determined by the Tribunal at Rs. 59,97,152/- (Rs.4,28,368/- x 14), and the same is confirmed.

8.Loss of consortium:

The Tribunal has awarded a sum of Rs.1,00,000/-, towards loss of consortium. As per the Constitution Bench's judgment in National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC), a sum of Rs.40,000/- has

to be awarded as loss of consortium to the wife of the deceased, and accordingly, the same is awarded.

9.Loss of love and affection:

A sum of Rs.1,00,000/- has been awarded by the Tribunal towards loss of love and affection and the same is reduced to Rs.40,000/-.

10.Funeral Expenses:

A sum of Rs.25,000/- has been awarded by the Tribunal towards funeral expenses. As per the Constitution Bench's judgment in National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC), the same is reduced to Rs.15,000/-.

11.Loss of estate:

A sum of Rs.1,00,000/- has been awarded by the Tribunal towards loss of estate and as per the Constitution Bench's judgment in National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC), the same is reduced to Rs.15,000/-.

12.Medical expenses:

A sum of Rs.25,000/- is awarded by the Tribunal towards medical expenses. Since the deceased was hospitalised before his death from 15.07.2016 to 20.07.2016, the same is confirmed.

13.Hence, the total compensation awarded in this case is Rs.61,32,152/-.

Head	Amount (Rs.)
Loss of income	5997152
Loss of consortium	40000
Loss of love and affection	40000
Funeral expenses	15000
Loss of estate	15000
Medical expenses	25000
	6132152

14.Accordingly, award of the Tribunal (i.e.,) Rs.63,47,152/- is reduced to Rs.61,32,152/-. The rate of interest awarded by the Tribunal at 7.5 % per annum remains unaltered.

15.Since it is submitted by the learned counsel for the appellant that some amount has already been deposited, the appellant is directed to deposit the balance amount, as per the order of this Court, within a period of four weeks from the date

of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to follow the ratio fixed by the Tribunal, for distribution of the award amount to the claimants. The share of the 1st respondent shall be transferred to her account by the Tribunal through RTGS, within one week thereon.

16. Since the 2nd respondent is a minor, his share shall be deposited in interest bearing fixed deposit in any of the nationalised banks until he attains majority. The 1st respondent, being the mother of the minor, is permitted to withdraw the interest accruing on such deposit once in three months.

17. With the above directions, this Appeal is partly allowed. Consequently connected miscellaneous petitions are closed. No costs.

s/d-
Assistant Registrar (CS-V)

True Copy

Sub-Assistant Registrar

sai
To

The Special District Judge,
Special District Court
Motor Accidents Claims Tribunal,
Tiruvallur.

Copy to
The Section officer
VR Section, High Court, Madras.

+1 CC to Mr. Amar D. Pandiya, Advocate sr 25034.
+1 CC to Mr. M. B. Gopalan Associates sr 25719.

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CA (CO)
SP (30/05/2018)