IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.06.2018

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN
AND
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A. No. 3504 of 2017
&
C.M.P. No. 6686 of 2018

United India Insurance Company Limited,
A5 & 6 IInd Floor, Appasamy Towers,
New No. 27, Sir Thiyagaraja Road,
Next to Old Nagesh Theatre,
T. Nagar, Chennai - 600 017. ..Appellant/2nd Respondent

Vs.

1. V. Arumugam
2. A. Bhanumathi ...1 & 2nd Respondent/ Petitioners 1 and 2
3. R. Rajesh Murugan ...3rd Respondent/1st Respondent
4. P. Kanchanamala ...4th Respondent/3rd Respondent

Prayer: Civil Miscellaneous Appeal as against the judgment and decree dated 23.06.2017 made in M.C.O.P. No. 1296 of 2011 by the Motor Accidents Claims Tribunal (VI Court of Small Causes), Chennai.

For Appellant :: Mr.A. Dhiraviyanathan

For Respondents:: Mr.N. Balaji for R1 & R2
Mr.B. Pragadeesh for R3

J U D G M E N T

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

This Civil Miscellaneous Appeal has been preferred by the Insurance Company as against the award of Rs.25,30,565/- for the death of one A. Shanmugam, aged about 36 years, working as Senior Executive (HR & Administration) in Cosmic Global Limited, Chennai - 34, earning a sum of Rs.12,000/- per month, in the accident, which occurred on 11.02.2008, when the motor cycle driven by the deceased was hit down by a car insured with the appellant Insurance Company, driven in a rash and negligent manner.

2. Heard Mr.A. Dhiraviyanathan, learned counsel for the appellant and Mr.N. Balaji, learned counsel for respondents 2 and 3 and Mr.B. Pragadeesh, learned counsel for the 3rd respondent. Though the 4th respondent has been served and her name is also printed in the cause list, none appears on behalf of the 4th respondent.

3. The only question to be decided is with regard to the quantum of compensation.

4. Mr.R. Dhiraviyanathan, learned counsel for the appellant pointed out that contrary to the Constitution Bench's judgment of the Honourable Apex Court rendered in National Insurance Company Limited V. Pranay Sethi and Others reported in 2017 ACJ 2700, a sum of Rs.3 lakhs has been awarded towards "Loss of Consortium" to the 4th respondent and Rs.2 lakhs has been awarded to respondents 1 and 2 towards "Loss of Love and Affection" and therefore, the award passed by the Tribunal requires considerable reduction.

5. However, the learned counsel for respondents 1 and 2 opposed any reduction.

6. As regards the contentions raised by the learned counsel for the appellant, with regard to the award of the Tribunal under the heads "Loss of Consortium" and "Loss of Love and Affection", law is very clear inasmuch as the Honourable Supreme Court, in the Constitution Bench's judgment in Pranay Sethi's case (stated supra) has quantified Rs.40,000/- as the amount to be granted towards "Loss of Consortium". Therefore, the sum of Rs.3 lakhs awarded towards "Loss of Consortium" is reduced to Rs.40,000/-. However, in Pranay Sethi's case, the awarding of amount towards "Loss of Love and Affection" either to parents or children has not been dealt with and therefore, there is no prohibition in any manner to award amount towards "Loss of Love and Affection" and accordingly, Rs.2 lakhs awarded towards "Loss of Love and Affection" to respondents 1 and 2 is confirmed.

7. The monthly salary of the deceased was proved to be Rs.12,000/- through Ex-P13, salary slip. Since the deceased was aged about 36 years, 50% of his actual salary has to be added towards "Future Prospects". Therefore, adding 50% towards "Future Prospects", the total income of the deceased comes to,

Monthly Income	::	Rs.12,000/-
ADD:50% towards "Future Prospects"	::	Rs.12,000/- (+) 50%(Rs.12,000/-)
Total Monthly Income	::	Rs.12,000/- (+) Rs.6,000/-
	::	Rs.18,000/-

As the size of the family of the deceased is three, one-third deduction was rightly made by the Tribunal towards " Personal Expenses". Therefore, applying the same, "Monthly Contribution of the deceased to his family" would be,

Total Monthly Income	::	Rs.18,000/-
LESS: 1/3rd towards "Personal Expenses"	::	Rs.18,000/-(-)1/3 (Rs.18,000/-)
Monthly Contribution	::	Rs.12,000/-
Annual Contribution	::	Rs.12,000/- x 12

Following the judgment of the Honourable Apex Court in Sarla Verma V. Delhi Transport Corporation reported in 2009 ACJ 1298 (SC), multiplier 15 has been rightly adopted by the Tribunal, based on the age of the deceased and applying the same, "Loss of Income" has been arrived at as hereunder:

Loss of Income	::	Rs.12,000 x 12 x 15
	::	Rs.21,60,000/-

8. As far as "Funeral Expenses" granted to the tune of Rs.25,000/- by the Tribunal is concerned, the same is reduced to Rs.15,000/-; Rs.10,000/- awarded towards "Transport Expenses" and Rs.1,16,365/- awarded towards "Medical Expenses", as per Ex-P11 are confirmed. Since no amount was awarded towards "Loss of Estate", a sum of Rs.15,000/- is awarded towards the same. Hence, the total compensation works out to,

Loss of Income	::	Rs.21,60,000/-
Loss of Consortium	::	Rs. 40,000/-
Loss of Love and Affection	::	Rs. 2,00,000/-
Funeral Expenses	::	Rs. 15,000/-
Transport Expenses	::	Rs. 10,000/-
Medical Expenses	::	Rs. 1,16,365/-
Loss of Estate	::	Rs. 15,000/-
Total	::	Rs.25,56,365/-

9. The Tribunal, while calculating the compensation, has fastened 10% contributory negligence on the deceased for want of production of driving licence of the deceased and the said finding is also confirmed. Therefore, after deducting 10% towards contributory negligence on the part of the deceased, the total compensation payable to respondents 1, 2 and 4 comes to, (Rs.25,56,365/- (-) 10% (Rs.25,56,365/-) = Rs.23,00,728/-, rounded off to Rs.23,00,000/-. The rate of interest awarded by the Tribunal @ 7.5% per annum remains intact.

10. The Tribunal, while dividing the award amount, under the head "Loss of Income" has apportioned as 30% each to parents and 40% to the wife. Since father is not a Class I Legal Heir, he is not entitled to equal share as that of the mother. Therefore, the apportionment made by the Tribunal is modified and out of the total compensation amount of Rs.23 lakhs, as per the award passed by this Court , the 1st respondent/father would

be entitled to Rs.3 lakhs, the 2nd respondent/mother and the 4th respondent/wife would be entitled to Rs.10 lakhs each.

11. Since it is submitted that the appellant Insurance Company has deposited only 50% of the award amount, the balance amount, as per the modified award passed by this Court, with proportionate interest and costs, is directed to be deposited before the Tribunal 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 transfer the respective shares of respondents 1, 2 & 4, as per the apportionment of this Court, to their respective bank accounts, through RTGS, within a period of one week thereafter.

12. In fine, the Civil Miscellaneous Appeal is partly allowed and the award of the Tribunal to the tune of Rs. 25,30,565/- is reduced to Rs.23 lakhs with interest @ 7.5% per annum. No costs. Connected C.M.P. is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To
The MACT (VI Court of Small Causes),
Chennai.

+1cc to Mr.A.Dhiraviyanathan, Advocate Sr.No.34685
+1cc to Mr.N.Balaji, Advocate SR.No.34593
+1cc to Mr.P.Suresh Srinivasan, Advocate SR.No.34885

AD(co)
sm:12.6.2018