IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 07.06.2018
CORAM
THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN
AND
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY
C.M.A. No. 3525 of 2017

The Oriental Insurance Company Limited,
Divisional Office,
No.4, Headquarters Road,
RVR Building, II Floor,
Coimbatore 641 018. ..Appellant/2nd Respondent

Vs.

1. P. Lakshmi
2. Minor P. Madhu Mithra
rep. by her guardian mother
P. Lakshmi
3. Ramasamy
4. Muthammal ..Respondents 1 to 4/
Petitioners

5. M. Nagaraj
6. T. Senthilkumar
7. The Oriental Insurance Company Limited,
Branch Office No.2, Post Box No.2907,
No.281, Cross Cut Road, First Floor,
OPP. IAB Photo Studio, Gandhipuram,
Coimbatore 641 012. ..Respondents 5 to 7/
Respondents 1,3 & 4

Prayer: Civil Miscellaneous Appeal as against the judgment and decree dated 23.03.2016 in M.C.O.P. No. 2681 of 2012 passed by the Motor Accidents Claims Tribunal (Special Subordinate Judge), Coimbatore.

For Appellant :: Mr.Mohan Babu

For Respondents:: Mr.N.E.A. Dinesh for R1 to R4

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.50,77,708/- passed by the Motor Accidents Claims Tribunal in M.C.O.P. No. 2681 of 2012 by judgment dated 23.03.2016, in favour of the legal heirs of one M.R. Palanisamy, aged about 44 years, employed as Grade I Foreman in Tamil Nadu Electricity Board, Madukkarai North, Coimbatore, earning about a sum of Rs.35,761/- in the accident, which occurred on 21.10.2011, when the two-wheeler driven by him was dashed down by another motor cycle belonging to the 5^{th} respondent and insured with the appellant Insurance Company.

2. Heard Mr.R. Mohan Babu, learned counsel for the appellant and Mr. N.E.A. Dinesh, learned counsel for respondents 1 to 4.

3. The challenge in this appeal is only with regard to the quantum of compensation awarded by the Tribunal. Hence, this Court is not going into the issue of negligence.

4. Learned counsel for the appellant would submit that the amount awarded towards "Loss of Consortium", namely, Rs.1 lakh to the 1^{st} respondent/wife and Rs.3 lakhs awarded towards "Loss of Love and Affection" to respondents 2 to 4 are contrary to the judgment of the Constitution Bench of the Honourable Apex Court rendered in National Insurance Company Limited V. Pranay Sethi and others reported in 2017 ACJ 2700. Therefore, the learned counsel for the appellant seeks reduction of the amount awarded by the Tribunal.

5. A perusal of the records would show that the victim was employed as a Foreman and he was drawing a salary of Rs.35,761/-, as proved by Ex-P17. Therefore, the Tribunal determined the monthly income at Rs.35,761/- and the same is confirmed. However, no amount was awarded towards "Future Prospects". Considering the fact that the deceased was aged about 44 years, as proved by Ex-P8 and the deceased was in Government employment, 30% has to be added towards "Future Prospects" as per Pranay Sethi's judgment. Therefore, adding 30% towards "Future Prospects", the "Total Monthly Income" comes to,

Monthy Income	::	Rs.35,761/-
		ADD: 30% towards "Future
Prospects"	::	Rs.35,761/-
		(+) 30% (Rs.35,761/-)
	::	Rs.35,761/- (+) Rs.10,728/-
	::	Rs.46,488/-

20% has to be deducted towards income tax and after deducting the same, the monthly income of the deceased comes to Rs.37,190/-. The family of the deceased consists of four members and therefore, one-fourth deduction has to be made towards "Personal and Living Expenses" of the deceased to arrive the "Monthly Contribution of the deceased to his family". Accordingly, deducting one-fourth towards "Personal and Living Expenses", the "Monthly Contribution of the deceased to his family" is arrived at as hereunder:

Monthly Income	::	Rs.37,190/-
Less:1/4th towards "Personal Expenses"	::	Rs.37,190/- (-) ¼(Rs.37,190/-)
	::	Rs.37,190/- (-) Rs.9297.5
Monthly Contribution	::	Rs.27,892.50
Annual Contribution	::	Rs.27,892.50 x 12

The appropriate multiplier to be adopted, as per the age of the deceased, namely, 44 years, is 14. Therefore, applying the said multiplier, "Loss of Income" comes to,

Loss of Income	::	Rs.27,892.50 x 12 x 14
	::	Rs.46,85,940/-

6. Now, coming to the other amounts awarded under the conventional heads, as rightly pointed out by Mr.Mohan Babu, learned counsel for the appellant, as per 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, towards "Loss of Consortium" Rs.40,000/- has been fixed by the Honourable Apex Court and therefore, this Court is left with no other option except to reduce the sum of Rs.1 lakh awarded under the said head to Rs.40,000/-. As regards "Loss of Love and Affection", a sum of Rs.3 lakhs has been awarded to respondents 2 to 4, which, in our view, is on the higher side and therefore, Rs.1,20,000/- is altogether awarded to respondents 2 to 4 under the said caption. The sum of Rs.25,000/- awarded towards "Funeral Expenses" is reduced to Rs.15,000/-;Rs.1,41,948/- awarded towards "Medical Expenses" based on Ex-P7 is confirmed. So also, the amount awarded towards "Loss of Estate" is confirmed. Since no amount was awarded towards "Transportation Expenses", a sum of Rs.10,000/- is awarded under the said head. The total compensation payable works out to,

Loss of Income	::	Rs.46,85,940/-
Loss of Consortium	::	Rs. 40,000/-
Loss of Love and Affection	::	Rs. 1,20,000/-
Funeral Expenses	::	Rs. 15,000/-
Loss of Estate	::	Rs. 15,000/-
Medical Expenses	::	Rs. 1,41,948/-
Transportation Expenses	::	Rs. 10,000/-
Total	::	Rs.50,27,888/-
rounded off to	::	Rs.50,25,000/-

The rate of interest awarded by the Tribunal @ 7.5% per annum remains unaltered. Since the driver of the vehicle insured with the appellant Insurance Company did not possess licence, pay and recovery was ordered by the Tribunal and the same is confirmed.

7. Out of the compensation amount of Rs.50,25,000/-, the 1st and 2nd respondents would be entitled to Rs.20 lakhs each and the balance sum of Rs.10,25,000/- has to be shared equally by respondents 3 and 4.

8. The appellant Insurance Company is directed to deposit the entire award amount, as per the modified award passed by this Court, with interest and costs, before the Tribunal, after deducting the amount already deposited if any, within a period of six 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 major claimants, namely, respondents 1, 3 and 4, to their respective bank accounts, through RTGS, within a period of one week thereon. The share of the minor/2nd respondent shall be deposited in any one of the Nationalised Bank in interest bearing Fixed Deposit till she attains majority. The 1st respondent is permitted to withdraw interest accruing on such deposit once in three months.

9. In the result, the Civil Miscellaneous Appeal is partly allowed and the award of the Tribunal, to the tune of Rs.50,77,708/- is reduced to Rs. 50,27,888/- rounded off to Rs.50,25,000/- with interest @ 7.5% per annum. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

nv
To

The MACT (Special Subordinate Judge,
Coimbatore.

copy to

The Section Officer
VR Section
High Court, Madras

+1 cc to Mr.V.Nicholas Advocate sr 35480
+1 cc to Mr.N.Vijayaraghavan Advocate sr 36107

sr(co)
aa28/06/2018