IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.04.2018

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

C.M.A.No.3531 of 2017
and
C.M.P.No.22654 of 2017

M/s.SBI General Insurance Company Limited,
2nd Floor, Ward No.A-1,
Block No.15, T.S.No.949,
Door No.104, Excellence Building,
Race Course Road, Coimbatore 641018. ...Appellant/3rd Respondent

Vs

1.Annammal

2.Francis

3.Uma Maheswari

4.Jenifar (Minor) ..Respondents 1to4/ Petitioner
(4th respondent minor rept. by mother
and next friend 1st respondent)

5.A.Kasiraja

6.K.Sadasivam ..Respondents 5&6/Respondents 1&2

PRAYER : Civil Miscellaneous Appeal filed against the judgment and decree made in M.C.O.P.No.1239 of 2014 dated 31.01.2017 on the file of the Motor Accidents Claims Tribunal, II Additional District & Sessions Court, Tiruppur.

For Appellant : Mr.M.B.Raghavan
for M/s.M.B.Gopalan Associates

For Respondents : Mr.K.Myilsamy (for R1 to R4)

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 compensation of Rs.20,26,000/- awarded for the death of one Jebaraj, aged about 24 years, a power loom worker, allegedly earning Rs.12,000/- per month, in the accident which occurred on 07.06.2014, when he was riding his two wheeler, which was dashed down by a tipper lorry belonging to the 5th respondent and insured with the appellant insurance company.

2.Heard the parties.

3.The only question to be decided in this matter is with regard to quantum of compensation. Therefore, this Court is not going into the question of liability.

4. Mr.M.B.Raghavan, learned counsel appearing for the appellant would oppose the determination of the monthly income at Rs.9,000/-. It is evident from the records that the Tribunal fixed the monthly income at Rs.9,000/- per month, in the absence of any documentary proof with regard to income, based on the Judgment of the Honourable Supreme Court in Syed Sadiq Vs. United India Insurance Company, reported in 2014 (1) TNMAC 459. Such determination based on the Honourable Supreme Court's Judgment is well founded as in the referred case, the accident occurred in the year 2008 and the monthly income of a vegetable vendor was fixed at 6,500/- and along with future prospects, it was determined as Rs.9,750/- whereas in this case, the accident occurred in the year 2014 and therefore, Rs.9,000/- determined by the Tribunal as monthly income of the deceased is confirmed.

5.The Tribunal based on the judgment of the Honourable Supreme Court in Sarla Verma & Others .Vs. Delhi Transport Corporation & another, reported in 2009 (2) TNMAC 1 (SC), took 50% towards future prospects of the deceased. However, as rightly pointed out by Mr.M.B.Raghavan, learned counsel appearing for the appellant, as per Honourable Supreme Court's Constitution Bench's judgment in National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC), 40% has to be added towards future prospects, if the victim is self employed and aged below 40 years. In this case, the age of the victim is 24 years, as proved by the postmortem certificate, Ex.P.2. Therefore, 50% added towards future prospects is reduced to 40%. After adding 40% towards future prospects, the monthly income comes to Rs.12,600/- (Rs.9,000/- + 40% of Rs.9,000/-).

6.The Tribunal deducted 1/3rd towards personal expenses of the deceased. However, the size of the family is four and therefore, as per the judgment of the Honourable Supreme Court in Sarla Verma & Others .Vs. Delhi Transport Corporation & another, reported in 2009 (2) TNMAC 1 (SC), the deduction should be 1/4th. After deducting 1/4th towards personal expenses, the monthly contribution of the deceased to his family comes to Rs.9,450/- (Rs.12,600/- - 1/4th of Rs.12,600/-). The appropriate multiplier to be adopted is "18" as the age of the deceased was 24 years and therefore, the total loss of income arrived at, is as follows:

Total Loss of Income = Rs.9,450/- x 12 x 18
= Rs.20,41,200/-.

7.Loss of consortium:

Rs.1,00,000/- awarded by the Tribunal towards loss of consortium to the 3rd respondent is against the Constitution Bench's judgment in National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC), and therefore, the same is reduced to Rs.40,000/-

8.Loss of love and affection:

A sum of Rs.60,000/- has been awarded by the tribunal towards loss of love and affection to respondents 1, 2 and 4 @ Rs.20,000 each. The 4th respondent is a minor. At the time of death of her father, she was aged about 1 year and 11 months. For normal growth of any child, the love and affection of mother, care and guidance of the father are essential. Even if a parent dies or is not available, for certain reasons, the said love cannot be compensated, by the other parent. Though the other parent would try to compensate, no amount of compensation could compensate such loss. The 4th respondent is a minor and she lost her father's guidance, love and care throughout her life and therefore, compensation has to be awarded towards loss of love and affection. Though Mr.M.B.Raghavan, learned counsel appearing for the appellant would submit that as per the constitution bench's judgment, there is no provision for awarding compensation towards loss of love and affection, the amount awarded towards loss of love and affection to the children and the parents of the deceased is akin to the amount awarded towards loss of consortium. It is not as if, the children or parents do not suffer, because of loss of father/mother or child. The Honourable Supreme Court would not have meant that no amount could be given towards loss of love and affection, especially, when the children suffer due to loss of either of the parents. Therefore, Rs.1,00,000/- is awarded towards loss of love and affection to the minor 4th respondent and Rs.20,000/- each awarded to respondents 1 and 2 by the Tribunal is confirmed.

9.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), Rs.20,000/- awarded by the Tribunal towards funeral expenses is reduced to Rs.15,000/-.

10.Loss of estate:

No amount was awarded towards loss of estate by the Tribunal. Therefore, a sum of Rs.15,000/- is awarded towards loss of estate.

11.Hence, the total compensation payable in this case is Rs.22,51,200/-. Rounded off to Rs.22,50,000/-

Head	Amount (Rs.)
Total loss of income	2041200
Loss of consortium	40000
Loss of love and affection	140000
Funeral expenses	15000
Loss of estate	15000
	2251200

12.The rate of interest at 7.5% per annum awarded by the Tribunal is confirmed. Though the appeal has been filed by the insurance company, taking into consideration that the Tribunal made wrong deduction towards personal expenses and wrongly added 50% towards future prospects, this Court after re-appreciating the evidence on record, has awarded a sum of Rs.22,50,000/-, in favour of the claimants, even in the absence of appeal/cross appeal filed by them, in the appeal filed by the insurance company. The appeal is the continuation of the original proceedings and this Court has got power and jurisdiction to re-appreciate the evidence and award more compensation, than prayed for even in the absence of appeal/cross appeal, as per the judgment of the Honourable Supreme court in Nagappa V. Gurdayal Singh reported in 2004 (2) TN MAC 398 (SC) by invoking Order 41 Rule 33 of CPC, and Section 151 CPC and Article 227 of Constitution of India. Just compensation has to be awarded to the claimants. It could be neither exorbitant nor less. In an endeavour to do complete justice only, the aforesaid amount has been awarded.

13.It is stated that the appellant had already deposited 50% of the amount awarded by the Tribunal and therefore, the balance amount, as per the order of this Court, with proportionate interest and costs, has to be deposited within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the respondents 1 and 2 are entitled to get Rs.2,50,000/- each; the 3rd respondent is entitled to get Rs.9,00,000/- and the minor 4th respondent is entitled to get Rs.8,50,000/- and the Tribunal shall transfer the respective amounts along with proportionate interest and costs to the accounts of the respective respondents 1, 2 and 3 through RTGS within a period of one week thereon. As far as the minor 4th respondent is concerned, her share shall be deposited in interest bearing Fixed Deposit in any one of the Nationalised Bank, till she attains majority. The 3rd respondent/mother is permitted to withdraw the interest accruing on such deposit once in three months.

14.The claimants are directed to pay the additional court fee, if any, within a period of one week from the date of receipt of a copy of this order.

15. Accordingly, the appeal is dismissed. Consequently connected miscellaneous petition is closed. No costs.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

sai

To

The Motor Accidents Claims Tribunal,
II Additional District & Sessions Court,
Tiruppur.

+1cc to Mr.K.Myilsamy, Advocate, sr.no.27082

+1cc to Mr.M.B.Gopalan, Advocate, sr.no.27384

C.M.A.No.3531 of 2017

NRL(CO)

RRK(24/05/2018)