IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2018

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN

AND

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A. No. 769 of 2018

1. Sujitha
2. Minor Sarvatha
   (rep. by N/F Guardian
   Mother Smt. Sujitha)
3. Sumathi
4. Balaji ..Appellants/Claimants

Vs.

1. M/s. Paramathi Agro Engg. Service,
   P. Velur Taluk, Namakkal District,
   Pin 637 213.

2. United India Insurance Co. Ltd.,
   Divisional Office -1,
   104/A, Peramanur Main Road,
   Salem 7. .. Respondents/Respondents

Prayer: Civil Miscellaneous Appeal as against the judgment and decree dated 25.07.2017 passed in M.C.O.P. No. 1872 of 2014 by the Motor Accidents Claims Tribunal (III Additional District Judge), Salem.

For Appellants :: Mr.K.Kuppusamy

For Respondents :: R1-exparte
Mr.T. Ravichandran for R2

J U D G M E N T

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

This Civil Miscellaneous Appeal has been filed as against the award of Rs. 13,65,000/- granted as compensation to the dependants of one S. Arun, aged about 28 years, an Engineer and proprietor of shop, by name, Aram Motors & Pumps Limited, dealing with sale of motor pumps, allegedly earning about Rs.50,000/- per month, who died in the accident, which occurred

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on 12.09.2014 when the said Arun, who was riding his motor cycle on Hasthampatti Main Road, was hit from behind by a tractor coming in the same direction belonging to the 1st respondent and insured with the 2nd respondent

2. Heard Mr.K. Kuppusamy, learned counsel for the appellants and Mr. T. Ravichandran, learned counsel for the 2nd respondent.

3. No appeal has been preferred by the Insurance Company regarding the negligence aspect and the claimants are before this Court challenging the quantum of compensation alone. Therefore, the only question to be decided is with regard to the quantum alone.

4. To prove that the deceased was an Engineer, Exs-P5 to P10 have been marked. To prove that he was doing business in sale of motor pumps, Exs-P10, P17 to P19 have been marked. Ex-P10 is the document issued by the Commercial Tax Department for having registered his business. Ex-P17 is the Bank Account standing in the name of his business enterprise, namely, Aram. Ex-P18 series relate to purchase order in favour of the deceased issued by Polard Pumps Private Limited, Rajkot, Gujarat. Ex-P19 is the receipt for having paid VAT. Therefore, from the above said documents, it is clear that he was dealing in sale of motor pumps and maintaining a bank account with Karur Vysya Bank. Ex-P12 is the Income Tax Returns submitted by the deceased for the year 2013-2014. Eventhough the returns speak about the annual income of the deceased as Rs.1,98,500/-, the Tribunal, without any basis, determined the monthly income at Rs.8000/-. When the annual income is Rs.1,98,500/-, the monthly income would be 16,541/- and the said amount is determined by this Court as the monthly income of the deceased, on re-appreciation of evidence.

5. The deceased was aged about 28 years, at the time of accident as per Ex-P2 postmortem certificate and Exs-P5 to P10, educational certificates, and Ex-P11, Driving Licence. Therefore, as per the judgment of the Constitution Bench of the Honourable Supreme Court in National Insurance Company Limited V. Pranay Sethi and Others reported in 2017 ACJ 2700, 40% has to be added towards "Future Prospects" and if 40% is added, " Total Monthly Income" would be,

Total Monthly Income	::	Rs.16,541, + 6616/- (40% of Rs.16,541/-)
	::	Rs.23,157/-

The size of the family is three, eventhough there are four claimants. Therefore, one-third deduction has to be made towards " Personal Expenses" of the deceased. Therefore, deducting one-

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third, "Monthly Contribution of the deceased to his family" would be,

Monthly Contribution :: Rs.23,157/-(-)1/3(Rs.23,157/-)
:: Rs.15,438/-

The appropriate multiplier for the age of 28 years, as per the judgment of the Honourable Apex Court in Sarla Verma's case (2009 (2) TN MAC Pg.1) is 17. Therefore, applying the said multiplier, "Loss of Income" is calculated as hereunder:

Loss of Income :: Rs.15,438 x 12 x 17
:: Rs.31,49,352/-

6. The Tribunal has awarded Rs. 1 lakh towards " Loss of Consortium" and the same has to be reduced to Rs.40,000/-, as rightly pointed out Mr.T.Ravichandran, learned counsel for the Insurance Company, as per the judgment of the Honourable Apex Court in Pranay Sethi's case. Accordingly, Rs.1 lakh is reduced to Rs.40,000/- towards "Loss of Consortium". Likewise, Rs.25,000/- awarded towards " Funeral Expenses" is reduced to Rs.15,000/-. A sum of Rs.15,000/- is awarded towards " Loss of Estate". The sum of Rs.10,000/- awarded towards " Transport Expenses" is confirmed. Since the 2nd appellant was hardly one year old, she lost the love and affection, care and guidance of her father throughout her life and the amount awarded towards "Loss of Love and Affection" is akin to the amount awarded towards "Loss of Consortium" to the spouse. Therefore, award of Rs.1 lakh towards " Loss of Love and Affection" to the 2nd appellant is confirmed. Likewise, Rs.50,000/- awarded to the 3rd appellant/mother of the deceased, towards " Loss of Love and Affection" is also confirmed. The total compensation payable comes to Rs. 33,79,352/-, rounded off to Rs.33,75,000/- and the rate of interest awarded by the Tribunal @ 7.5% per annum remains unaltered.

7. The direction given by the Tribunal, regarding pay and recovery, for non-payment of road tax, by the 1st respondent, owner of the offending vehicle, based on Ex.X3 is confirmed.

8. Out of the total compensation of Rs.33,75,000/-, the 1st and 2nd appellants would be entitled to Rs.15 lakhs each and 3rd appellant would be entitled to Rs.3,75,000/-. Being brother of the victim, the fourth appellant is not entitled to share in the compensation. The appellants shall pay additional court-fee for the enhanced amount, if any.

9. The 2nd respondent Insurance Company is directed to deposit the entire amount, as per the modified award passed by this Court, with interest and costs, before the Tribunal, after

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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 appellants 1 and 3 to their bank accounts, through RTGS, within a period of one week thereon. The share of the minor/2nd appellant shall be deposited in any one of the Nationalised Banks, in interest bearing Fixed Deposit, till she attains majority. The 1st appellant ,being the mother, is permitted to withdraw interest accruing on such deposit once in three months.

8. In the result, the Civil Miscellaneous Appeal is partly allowed and the award of the Tribunal, to the tune of Rs.13,65,000/- is enhanced to Rs.33,75,000/- with interest @ 7.5% per annum. No costs.

Sd/-
Assistant Registrar (CS-VII)

// True Copy//

Sub Assistant Registrar

To

The III Additional District Judge,
Motor Accident Claims Tribunal, Salem.

(Additional Court fee filed 26.07.2018 vide USR 58059)

+1 cc to MR.K.KUPPUSAMY, Advocate SR.No.37295

+1 cc to MR.T.RAVICHANDRAN, Advocate SR.No.37801

C.M.A. No. 769 of 2018

KGK(CO)
SMI/23.08.2018

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