IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2018

CORAM

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

C.M.A. No. 8 of 2018
&
C.M.P. No. 89 of 2018

The Oriental Insurance Company Limited,
Mayiladuthurai.

..Appellant/Respondent -2

Vs.

1. Sheeladevi
2. Anupriya
3. Mohanasundaram (minor)
(minor rep. by his mother and guardian
1st respondent herein)

... Respondents/Petitioners

4. Sekar ..4th Respondent/Respondent -I

Prayer: Civil Miscellaneous Appeal as against the judgment and decree dated 10.08.2017 passed in M.C.O.P. NO. 286 of 2015 by the Motor Accidents Claims Tribunal (Additional Sub Court), Mayiladuthurai.

For Appellant :: Mr.S. Manohar

For Respondents:: Mr.R. Shivakumar for
M/s.K.M.Vijayan Associates
for R1 & 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 preferred by the Insurance Company as against the award of Rs.19,25,000/- passed by the Motor Accidents Claims Tribunal (Additional Sub Court), Mayiladuthurai, in M.C.O.P. No. 286 of 2015, by order dated 10.08.2017, for the death of one Vidyasagar, aged about 19 years, a sculptor by profession, alleged to be earning about Rs.15,000/- per month, in the accident, which occurred on

22.03.2015, when the two-wheeler, in which the deceased was travelling as a pillion rider, was hit down by a lorry coming in the opposite direction, driven rashly and negligently.

2. Heard Mr.S.Manohar, learned counsel for the appellant, Mr.R. Shivakumar, learned counsel for M/s.K.M. Vijayan Associates for respondents 1 and 2.

3. Though Mr.S. Manohar, learned counsel for the appellant would submit that the rider of the two-wheeler in which the deceased travelled as a pillion rider did not possess a driving licence, the Tribunal, based on Ex-P2, Motor Vehicle Inspector's Report, which speaks about the possession of driving licence by the two-wheeler rider, had rejected the said contention and the Tribunal was right in doing so. Therefore, the contention of the learned counsel for the appellant in this regard deserves to be rejected.

4. The next contention of the learned counsel for the appellant is that the Tribunal determined the monthly income of the deceased at Rs.8000/- per month and added 50% of the actual salary towards "Future Prospects" and this addition of 50% is 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 and he seeks to reduce the same.

5. As far as the monthly income fixed by the Tribunal is concerned, it is on the lower side. A Division Bench of this Court, in the judgment in National Insurance Company Limited V. R. Vimala and Others reported in Manu/TN/2960/2015 determined the monthly income of a mason, who died in the accident, which took place on 14.01.2013, at Rs.15,000/- per month whereas in this case, the accident had occurred on 22.03.2015. However, considering the age of the deceased, ie., 19 years, this Court, instead of determining the monthly income at Rs.15,000/-, as per the aforesaid judgment, determines the same at Rs.12,000/-, enhancing it from Rs.8000/- per month as fixed by the Tribunal.

6. As rightly pointed out by Mr.S. Manohar, learned counsel for the appellant, in the light of the judgment of the Constitution Bench of the Honourable Apex Court in Pranay Sethi's case (2017 ACJ 2700), 40% has to be added towards "Future Prospects". Accordingly, adding 40%, the "total monthly income" would be,

Monthly Income :: Rs.12,000/-
ADD: 40% towards "Future Prospects":: Rs.12,000/- (+) 40% (Rs.12,000/-)
:: Rs.16,800/-

The deceased was a bachelor and therefore, 50% of his salary has to be deducted towards " Personal and Living Expenses".

Therefore, deducting 50% towards the same, " the Monthly Contribution of the deceased to his family" is determined as,

Total Monthly Salary	::	Rs.16,800/-
LESS: 50% towards " Personal Expenses"	::	Rs.16,800/-(-)50% (Rs.16,800/-)
	::	Rs.16,800/- (-) Rs.8,400/-
Monthly Contribution	::	Rs.8,400/-
Annual Contribution	::	Rs.8,400 x 12
	::	Rs.1,00,800/-

The appropriate multiplier, as per the age of the deceased, which is proved by Ex-P3, postmortem certificate, is 18. Applying the same, " Loss of Dependency" would be,

Loss of Dependency	::	Rs.1,00,800 x 18
	::	Rs.18,14,400/-

7. As far as the other amounts are concerned, the amount awarded towards " Loss of Love and Affection" is reduced to Rs.1,00,000/- and so also, the amount awarded towards " Funeral Expenses" is reduced to Rs.15,000/-. The sum of Rs.10,000/- awarded towards " Loss of Estate" is enhanced to Rs.15,000/- while the amounts awarded under " Transport Expenses" and Damage to Clothes", ie., Rs.10,000/- and Rs.2000/- respectively, are confirmed. Hence, the total compensation payable to the claimants is,

Loss of Dependency	::	Rs. 18,14,400/-
Loss of love and affection	::	Rs. 1,00,000/-
Funeral Expenses	::	Rs. 15,000/-
Damage to Clothes	::	Rs. 2,000/-
Transport Expenses	::	Rs. 10,000/-
Loss of Estate	::	Rs. 15,000/-
Total	::	Rs. 19,56,400/-

8. Though the respondents/claimants are entitled to the aforesaid amount, this Court, instead of enhancing the amount, is inclined to confirm the award of the Tribunal to the tune of Rs.19,25,000/- with interest @ 7.5% per annum.

9. Since the deceased did not wear a helmet at the time of accident, 10% contributory negligence was fixed on the deceased for violaton of Section 129 of Motor Vehicles Act, 1988. The approach of the Tribunal is appreciated and fixation of 10% contributory negligence on the deceased is also confirmed. Hence, the compensation payable to the claimants, after deducting 10% towards contributory negligence, at Rs.17,32,500/-, arrived at by the Tribunal, stands confirmed.

10. Since it is submitted that the appellant Insurance Company has already deposited 50% of the award amount, they are directed to deposit balance amount, with proportionate interest and costs, 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 the major claimants, to their bank accounts, as per the apportionment of the Tribunal, through RTGS, within a period of one week therefrom. The share of the minor claimant shall be deposited in interest bearing Fixed Deposit in any one of the Nationalised Banks, till he attains majority. The 1st respondent is permitted to withdraw interest accruing on such deposit once in three months.

11. In the result, the Civil Miscellaneous Appeal is dismissed confirming the award passed by the Tribunal. No costs. Connected C.M.P. is closed.

Sd/-
Assistant Registrar(CS V)

//True copy//

Sub Assistant Registrar

nv

To

1.The Additional Sub Judge,
The MACT (Additional Sub Court),
Mayiladuthurai.

2.The Section Officer,
VR Section, High Court,
Madras (2 Copies)

+1cc to Mr.K.M.Vijayan Associates, Advocate SR.No.31368
+1cc to Mr.S.Manohar, Advocate SR.No.31431

C.M.A. No. 8 of 2018

BR(CO)
GN(22/06/2018)