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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CMA No.685 of 2017
and
CMP No.3824 of 2017

The New India Assurance
Company Limited
Perambalur

... Appellant/2nd Respondent

-vs-

1. J. Thomai Ammal ...1st Respondent/ Petitioner
2. I. Sikkandar .. 2nd Respondent/1st Respondent

PRAYER : This Civil Miscellaneous Appeal filed under Section 173 of M.V. Act, 1988, against the judgment and decree in M.C.O.P No.638 of 2013 dated 29.01.2016 on the file of the Motor Accidents Claims Tribunal, Principal District Judge, Perambalur.

For Appellant : Mrs. N. Harini
for N.Vijayaraghavan

For Respondents: Mr. T. Gopinath for R1
R2-ex-parte

J U D G M E N T

[Judgment of the Court made by R.SUBRAMANIAN,J.]

The Insurance Company challenges the award of compensation of Rs.18,10,000/- made in favour of the claimant for the death of her son, aged about 25 years at the time of accident, which took place on 08.05.2013.

2. It is the case of the claimant/ first respondent that on 08.05.2013 at about 4.45 p.m, while the deceased was riding his motor cycle bearing registration No.TN-48-P-7994, on the Trichy-Ponmalai Road, the lorry bearing Registration No.TN-59-H-3789, hit against the motor cycle. In the accident, the rider



of the motor cycle sustained grievous head injuries and died on the spot. The claimant who is the mother of the deceased, has filed the claim petition seeking a compensation of Rs.25,00,000/-, stating that she has lost her only son in the accident due to the rash and negligent driving of the driver of the lorry.

3. The 2nd respondent herein, is the owner of the lorry, insured with the appellant Insurance Company. The 2nd respondent remained ex-parte before the Tribunal. The claim was resisted by the insurance company, denying the grounds raised by the claimant. It was also contended that the compensation claimed is highly excessive.

4. The Tribunal on a consideration of the evidence on record has answered the question of negligence against the Insurance Company.

5. With regard to the quantum of compensation, the Tribunal has taken the monthly salary at Rs.8000/-, adding 50% to his future prospects, the Tribunal had worked out his monthly income as Rs.12,000/-. After deducting 1/3 towards his personal expenses, adopting the multiplier '18', the Tribunal had awarded a sum of Rs.17,28,000/- for loss of dependency. The Tribunal has also awarded Rs.50,000/- towards loss of love and affection, Rs.20,000/- for Funeral Expenses, Rs.10,000/- for Transport Charges and Rs.2000/- towards damages to clothes. Thus, a total compensation of Rs.18,10,000/- was granted by the Tribunal.

6. We have heard Ms. Harini, learned counsel for the appellant and Mr. T. Gopinath, learned counsel for the first respondent.

7. The learned counsel for the appellant Insurance Company strenuously contended that the Tribunal is not right in adding 50% of the monthly income towards future prospects. She would also submit that as per the judgment of the larger Bench of the Hon'ble Supreme Court in National Insurance Co. Ltd vs Pranay Sethi and others reported in 2017 (2) TN MAC 27, the Tribunal should have added 40% of the income towards future prospects and deducted 50% towards personal expenses, in as much as the deceased was a bachelor, having his mother alone as a dependent.

8. Mr. T. Gopinath, learned counsel appearing for the respondent claimant would contend that though the Tribunal has added 50% towards future prospects and has deducted 1/3 towards personal expenses, the basic salary taken by the Tribunal at Rs.8000/-, is very low, while considering the qualification of the deceased. Exs. P7, P8, P9, P10 and P11 would show that the deceased has got National Trade Certificate and he has also



undergone Apprenticeship training course in Bharat Heavy Electricals Ltd., Trichy. Exhs.P10 & P11 would show that the deceased had obtained Diploma in CCNA- Hardware & Networking.

9. We see considerable force in the contention of the learned counsel for the appellant. However, considering the qualification possessed by the deceased, this Court is of the opinion that the Tribunal should have taken the income at Rs.10,000/- per month. Adding 40% towards future prospects, the monthly income of the deceased is fixed as Rs.14,000/-. Deducting 50% towards his personal expenses, the Loss of Dependency is fixed at Rs.7000/- per month. Considering the age of the deceased, the appropriate multiplier to be adopted is 18. Therefore, the pecuniary loss is Rs.15,12,000/- [Rs.7,000 x 12 x 18]. The Tribunal has awarded a sum of Rs.50,000/- towards loss of love and affection, which is on the higher side. In view of the judgment of the larger Bench of the Hon'ble Supreme Court in National Insurance Co. Ltd Vs. Pranay Sethi and others reported in 2017 (2) TN MAC 609 (SC), the same is reduced to Rs.40,000/-. The sum of Rs.20,000/- awarded for funeral expenses is enhanced to Rs.25,000/-. The award made under other heads, namely, Transport charges and loss of cloths, are confirmed. A sum of Rs.15,000/- is awarded towards loss of estate. Thus, the total compensation works out to Rs.16,04,000/- and the same is rounded off to Rs.16,00,000/-.

10. In view of the above, the appeal is partly allowed and the award of the Tribunal is modified granting a sum of Rs.16,00,000/- as compensation with interest at 7.5% from the date of the claim petition till date of deposit with proportionate costs. The Insurance Company is directed to deposit the award amount, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the respondent claimant is entitled to withdraw the entire award amount. There will be no costs in this appeal. Consequently, the connected Miscellaneous Petition is closed.

avr

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To
The Motor Accident Claims Tribunal,
Principal District Judge
Perambalur.



Copy to:-

The Section Officer,
V.R.Section,
High Court, Madras - 104.

+1cc to Mr.N.Vijayaraghavan, Advocate, SR.No.60255
+1cc to Mr.T.Gopinath, Advocate, SR.No.59657

CMA No.685 of 2017
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Kak(18/11/2019)