IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.08.2018

CORAM:

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

CMA No.960 of 2018
and
CMP No.7830 of 2018

The Branch Manager
The New India Assurance
Company Limited .... Appellant/2nd Respondent

-vs-

1. R. Shobha
2. Minor Haviha
   rep. by mother & NF
   1st respondent ..Respondents 1 to 3/Petitioner
3. Sakkubai
4. K. Vinod ...4th Respondent/1st Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of M.V. Act, 1988, against the judgment and decree in M.C.O.P No.43 of 2016 dated 26.04.2016 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Thiruvarur.

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

For Respondents : Mr.M.Thamizhavel for R1 to R3

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

The Insurance Company challenges the compensation of Rs.43,98,200/- awarded for the death of one Ramakrishnan, in a motor accident that took place on 28.11.2014.

2. It is the case of the claimants/ respondents 1 to 3 that on 28.11.2014 while the deceased was proceeding towards Tiruvarur, in a Honda Shine motor cycle bearing registration

No.TN-50-J-9191, at about 11.30 hours near Keezhapadugai Main Road, the lorry bearing Registration No.TN-31-H-4569, dashed against the motor cycle. In the said accident, the rider of the motor cycle was crushed under the wheels of the lorry and died in the hospital on the same day. Stating that the lorry was driven in a high speed, the respondents 1 to 3, who are the wife, child and mother of the deceased, filed the claim petition seeking a compensation of Rs.1,00,00,000/-.

3. The 4th respondent herein, is the owner of the vehicle, insured with the appellant Insurance Company. The claim was resisted denying the claim regarding the manner in which the accident occured. It was also contended that the compensation claimed is on the higher side.

4. The Tribunal on a consideration of the evidence on record found that the accident had occurred due to the rash and negligent driving of the lorry belonging to the 4th respondent, insured with the appellant Insurance Company.

5. According to the claimants, the deceased was employed in D.K. Para Medical Institute and was earning a salary of Rs.18,000/- per month. Apart from the above, the deceased was also a partner of a firm called "Best Products" manufacturing paper cups and he was getting an income of Rs.26,000/- per month from the said business. On the above pleadings, the claimants sought for a compensation of Rs.1 crore. The Tribunal took the monthly income as Rs.24,000/- per month, adding 30% towards future prospects, the Tribunal arrived at a monthly income of Rs.31,200/-, after deducting 1/3 for personal expenses, the loss of monthly income was fixed at Rs.20,800/-. The Tribunal adopted multiplier '17' and finally granted a sum of Rs.42,43,200/- towards pecuniary loss. The Tribunal also awarded a sum of Rs.30,000/- for funeral expenses and Rs.1,25,000/- towards loss of love and affection and consortium. Thus, the Tribunal awarded a total compensation of Rs.43,98,200/- to the family of the deceased. Aggrieved by the same, the Insurance Company has come on appeal before this Court.

6. Heard Mrs. Harini, learned counsel for the appellant Insurance Company and Mr. M. Thamizhavel, learned counsel for the respondents claimants.

7. The learned counsel for the appellant would contend that the Tribunal was not right in taking the monthly income as

Rs.24,000/-when there is no documentary evidence to prove that the deceased was getting any income from the partnership business. The income from the partnership business does not reflect in the Income Tax returns. However, taking into consideration the fact that there would have been some income from the business, we fix the monthly income at Rs.20,000/-. At the time of accident the age of the deceased was 31 years, hence 40% of the income is to be added towards future prospects as per the judgment of the Hon'ble Supreme Court in National Insurance Co. Ltd vs Pranay Sethi and others reported in 2017 (2) TN MAC 27. Further, 1/3 of the monthly income is to be deducted towards personal expenses. In this case, the Tribunal has wrongly applied multiplier 17. As per the judgment of the Hon'ble Supreme Court in Sarala Varma & Other Vs. Delhi Transport Coporation & another reported in 2009(2) TNMAC 1, for the age of 31 the multiplier to be adopted is only '16'. Therefore, the pecuniary loss is worked out at Rs.35,90,400/- [Rs.20,000 + 8,000 - 9,300 = 18,700 x 12 x 16]. The Tribunal has awarded a sum of Rs.50,000/- for loss of consortium, Rs,50,000/- for loss of love and affection to the minor daughter and Rs.25,000/- for loss of love and affection to mother. As per the judgment of the Larger Bench of the Hon'ble Supreme Court in National Insurance Co. Ltd Vs. Pranay Sethi and others, a sum of Rs.25,000/- is fixed for each of the claimants. The funeral expenses of Rs.30,000/- awarded by the Tribunal is sustained. A sum of Rs.50,000/- is awarded towards 'loss of estate'. Therefore, the claimants would be entitled to a compensation of Rs.37,45,400/- which is rounded of to Rs.37,50,000/- with proportionate interests and costs.

8. In the result, the appeal is partly allowed and the award is modified as above with an interest of 7.5% per annum and proportionate costs. The appellant Insurance Company is directed to deposit the award amount, less the amount if any already deposited, within a period of eight weeks from the date of receipt of a copy of this order. The first respondent is the wife of the deceased, the 2nd Respondent is the minor daughter and the third respondent is the mother of the deceased. The mother is entitled for Rs.7,50,000/- with proportionate interest. The wife and the minor child of the deceased will be entitled to the balance Rs.30,00,000/- apportioned equally, with proportionate interests and costs.

9. On such deposit, the 1st and 3rd respondents are entitled to withdraw their shares. The Tribunal is directed to deposit the share of the second respondent minor claimant, in interest earning Fixed Deposit in any of the Nationalised Banks till she attains majority. The 1st respondent, the mother of the deceased

will be entitled to withdraw quarterly interest accruing on the Fixed Deposit for the maintenance of the minor child. There will be no order as to costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal,
Chief Judicial Magistrate Court, Thiruvarur.

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

+1cc to Mr.N.Vijayaraghavan, Advocate, S.R.No.59403
+1cc to Mr.M.Thamizhavel, Advocate, S.R.No.58443

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and
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AD(CO)
CS/14/11/2018