

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.06.2018

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN

AND

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A. No. 99 of 2018

&

Cross-Objection No. 18 of 2018

&

C.M.P. No. 6778 of 2018

Bharti Axa General Insurance Co. Ltd.,
162-Anna Salai,
2nd Floor, Metro Plaza,
Chennai - 600 002.

..Appellant/1st respondent in
Cross-Objection

Vs.

1. Malathi
2. Kumari

..Respondents 1 & 2 in appeal/
Cross-Objectors

3. M/s. Techno Frames India Pvt. Ltd.,
No.15, Railway Colony,
3rd Street, Aminjikarai,
Chennai - 29.

..3rd respondent in appeal/
2nd respondent in Cross-objection

Prayer: Civil Miscellaneous Appeal and cross objection are filed as against the judgment and decree dated 07.04.2016 passed by the Motor Accidents Claims Tribunal (III Additional District Court, Poonamallee), in M.C.O.P. No. 99 of 2015.

For Appellant in CMA
1st Respondent in
Cross Objection

:: Mr.S. Arunkumar

For Respondents 1 & 2 in CMA :: Mr.K. Varadhakamaraj
Cross Objectors in for R1 & R2
Cross Objection

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 by the Insurance Company as against the award of Rs.16,11,400/- granted as compensation to the dependants of one J.P. Prasad, aged about 32 years, employed in an outsourcing company, allegedly earning about Rs.27,000/- per month, who died in the accident, which occurred on 05.03.2014, when the car in which he was travelling, from North to South direction on Vandalur to Minjur new 400 feet bypass road above Nemilicheri Bridge, driven rashly and negligently, hit against a barricade, resulting in his death on the spot.

2. Heard Mr.S. Arunkumar, learned counsel for the Insurance Company and Mr.K.Varadhakamaraj, learned counsel appearing for the claimants.

3. The claimants have also filed a cross-objection as against the award passed by the Tribunal.

4. Mr.S. Arunkumar, learned counsel for the Insurance Company would vehemently argue that in the absence of any documentary proof, regarding the income of the deceased, the tribunal was wrong in fixing the monthly income at Rs.10,000/-. Likewise, he found fault with the Tribunal for awarding a sum Rs. 1 lakh towards " Loss of Love and Affection" to the 2nd respondent and Rs.1 lakh towards " Loss of Consortium", to the 1st respondent, which is contrary to the judgment of the Constitution Bench of the Honourable Apex Court in Pranay Sethi's case. Therefore, he seeks to reduce the amount.

5. On the other hand, Mr.K. Varadhakamaraj, learned counsel for the claimants would support the award and in fact, he argued for enhancement of compensation.

6. Though the claimants have filed Ex-P4 to prove that the deceased was working between February, 2013 and August, 2013, in an outsourcing company, earning about Rs. 27,000/- per month, the Tribunal did not take into consideration, the said document, since the document speaks about period of employment only for a few months. So, even in the absence of any proof regarding the income at the time of accident, the Tribunal, based on Ex-P4, namely, past work of the deceased, determined the monthly income

at Rs.10,000/-. The sum of Rs.10,000/- fixed by the Tribunal as monthly income of the deceased is on the higher side. Therefore, we determine the monthly income at Rs.9000/-.

7. No amount was added towards "Future Prospects". Considering the fact that the deceased was aged about 32 years as proved by Ex-P3, postmortem certificate, 40% has to be added towards "Future Prospects". If 40% is added, then the "total monthly income" would be,

Monthly Income	::	Rs.9000/-
Add: 10% towards "Future Prospects"	::	Rs.9000/- +40%(Rs.9000/-)
Total Monthly Income	::	Rs.9000 + Rs.3600/-
	::	Rs.12,600/-

The Tribunal deducted one-third towards "Personal Expenses" of the deceased as the size of the family is two. Accordingly, deducting one-third towards "Personal Expenses", the "Monthly Contribution of the deceased to his family" would be,

Monthly Contribution::	Rs.12,600/- (-) 1/3(Rs.12,600/-)
::	Rs.8400/-

As already found, the age of the deceased was 32 years at the time of accident, as per Ex-P3 postmortem certificate. The appropriate multiplier, for the said age is 17, as per the judgment of the Honourable Apex Court in Sarla Verma's case (2009 6 SCC 121) whereas the Tribunal adopted a wrong multiplier, i.e., 18. Applying the correct multiplier, 17, "Loss of Income" is calculated as follows:

Loss of Income ::	Rs.8400 x 12 x 17
::	Rs.17,13,600/-

8. The amount of Rs.1 lakh awarded towards "Loss of Love and Affection" to the 2nd respondent and Rs.1 lakh awarded towards "Loss of Consortium" to the 1st respondent and Rs.25,000/- awarded towards "Funeral Expenses" are reduced to Rs.50,000/-, Rs.40,000/- and Rs.15,000/- respectively, as per the judgment of the Honourable Apex Court in Pranay Sethi's case. No amount was awarded towards "Loss of Estate" and a sum of Rs.15,000/- is awarded under the said head. Likewise, a sum of Rs.10,000/- is awarded towards "Transport Charges". The total compensation payable to the claimants comes to Rs.18,43,600/- rounded off to Rs.18,50,000/-.

9. The rate of interest awarded by the Tribunal @7.5% per annum remains undisturbed. The claimants shall pay additional court-fee for the enhanced amount, if any, within two weeks from the date of receipt of a copy of this order.

10. Out of the total compensation of Rs.18,50,000/-, the 1st respondent/wife is entitled to Rs.13,50,000/- and the 2nd respondent/mother is entitled to Rs.5 lakhs.

11. The appellant Insurance Company is directed to deposit the entire award amount, as per the modified award passed by this Court, with interest and costs, before the Tribunal, after 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 the claimants to their respective Bank Accounts through RTGS within a period of one week thereon.

12. In fine, the Civil Miscellaneous Appeal filed by the Insurance Company is disposed of and the Cross-objection filed by the claimants is partly allowed. No costs. Connected C.M.P. is closed.

Sd/-
Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

nv

To

1 The (III Addl. District Court),
the Motor Accident Claims Tribunal,
Poonamallee.

+1cc to Mr.S.ARUN KUMAR, Advocate, S.R.No. 39503

C.M.A. No. 99 of 2018 &
Cross-Objection No. 18 of 2018

AK(CO)
TR(01/08/2018)

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