IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.12.2018

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE
C.M.A.No.1826 of 2018

1.S.Chinnaraj

2.Deivathai ... Appellants/Petitioner

Vs

1.Sureshkumar

2.The Tata AIG General Insurance Co. Ltd.,
Penninsula Corporate Park,
Nicholas Piramal Tower,
9th Floor, Ganpatro Kadam Marg.,
Lower Parel, Mumbai 400 013. ... Respondents/Respondents

PRAYER : Civil Miscellaneous Appeal filed against the fair and final orders dated 02.11.2016 in M.C.O.P.No.674 of 2013 on the file of Forum of Motor Accident Claims, Special Subordinate Judge, Coimbatore.

For Appellant :Ms.A.Kundavai

For Respondents :Mr.R.Mohan babu
for M/s.M.B.Gopalan Associates (for R2)

J U D G M E N T
(Judgment of the Court was delivered by N.KIRUBAKARAN, J)

The appeal has been preferred by the parents and legalheirs of one C.Gowtham, aged about 17 years, 12th standard student, who died in the accident, which occurred on 16.09.2012, when he was riding as a pillion rider in a motorcycle driven by one Mr.Selvakumar, which was hit down by an another motorcycle belonging to the 1st respondent, insured with the 2nd respondent, driven rashly and negligently. Therefore, the claim petition.

2.The Tribunal fastened 70% liability on the respondent's vehicle and 30% on the driver, who drove the two wheeler, in which the deceased was a pillion rider and determined the monthly income of the deceased at Rs.8,000/- and awarded a sum of Rs.6,95,800/-, out of the total amount of Rs.9,94,000/-. Such an award is being challenged before this Court regarding the liability as well as quantum of compensation by the appellants/claimants.

3.Heard Mr.A.Kundavai, learned counsel appearing for the appellant and Mr.R.Mohan Babu, learned counsel representing M/s.M.B.Gopalan Associates.

4.Though there was no eyewitness examined on behalf of the respondents and the respondents only examined the officer of the Insurance Company, inspite of PW2's evidence, the rider of the two wheeler, in which the deceased was travelling, the Tribunal fixed 70% liability on the opposite vehicle and 30% on the rider of the two wheeler, in which the deceased was travelling.

5.A perusal of Ex.P.4/charge sheet, would reveal that the Hero Honda vehicle driven by one Mr.Sathyamoorthy was driven rashly and negligently and hit against the two wheeler driven by Mr.Selvakumar, in which the deceased was seated as pillion rider. Moreover, PW2 categorically stated that when he was about to park the vehicle in the mud road after crossing the road, the vehicle driven by Mr.Sathyamoorthy came at great speed and hit against his vehicle. However, the Tribunal taking the statement of PW2 that when he was about to park the vehicle in mud road, Mr.Sathyamoorthy driven the two wheeler rash and negligently and hit against it, fixed the liability stating that there was contributory negligence on the part of Mr.Selvakumar also. A close scrutiny of evidence of PW2 would reveal that he crossed the road and in the process of parking the vehicle on the mud road only, Mr.Sathyamoorthy came and hit against his vehicle. The above evidence of PW2 would make it clear that he had crossed the road and the vehicle was being parked and therefore, there is no negligence on the part of Mr.Selvakumar/PW2 and it was on the part of Mr.Sathyamoorthy, who caused the accident. Therefore, 30% liability fixed on Mr.Selvakumar/PW2, who is the rider of TVS Excel Super bearing Reg. No.TN 32 BP 3346 is liable to be set aside and the entire liability is fixed on Mr.Sathyamoorthy, who was the rider of Hero Honda Splendor vehicle bearing Reg. No. TN 37 BV 3834. In view of that, the entire compensation has to be paid by the 2nd respondent only.

6.The Tribunal determined the monthly notional income of the deceased at Rs.8,000/- as the victim was a moderate student studying in a Higher Secondary School. However, Ex.P.11/SSLC mark sheet would reveal that he secured 472 marks out of 500 and Ex.P8/mark details of the deceased would reveal that he obtained 924 marks out of 1200 in 11th standard. Therefore, he cannot termed as a moderate student and he should be a student in the category of more than average. Therefore, Rs.8,000/- determined by the Tribunal as notional monthly income is liable to be enhanced to Rs.10,000/-. Accordingly, Rs.10,000/- is fixed as notional monthly income of the deceased. As per the Constitution Bench's judgment of the Honourable Apex Court in National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC), 40% has to be added towards future prospects. After adding 40%, the notional monthly income comes to Rs.14,000/- (Rs.10,000/- + 40% of Rs.10,000/-). As per Ex.P.8/SSLC mark sheet and Ex.P.10/Transfer Certificate, the age of the deceased is 17 years. As per the judgment of the Honourable Supreme Court in Sarla Verma & Others .Vs. Delhi Transport Corporation & another, reported in 2009 (2) TNMAC 1 (SC), the appropriate multiplier is “18”. Therefore, applying the said multiplier, the loss of income would be at Rs.30,24,000/- (Rs.14,000/- x 12 x 18).

7.Since the deceased died as a bachelor, 50% has to be deducted towards personal expenses. After deducting 50% towards personal expenses, the loss of monthly income would be at Rs.15,12,000/- (Rs.30,24,000/- + 50% of Rs.30,24,000/-).

8.Funeral expenses:

The Tribunal has awarded a sum of Rs.25,000/- under this head. The same is reduced to Rs.15,000/-.

9.Transportation:

Even though no amount was awarded by the Tribunal under this head, this Court awards a sum of Rs.10,000/- under this head.

10.Loss of estate:

The Tribunal has awarded a sum of Rs.5,000/- under this head. The same is enhanced to Rs.15,000/-.

11.Love and affection:

The Tribunal has awarded a sum of Rs.1,00,000/- under this head. The same is reduced to Rs.40,000/- each to the appellants.

Head	Amount (Rs.)
Loss of income	1512000
Funearal expenses	15000
Transportation	10000
Loss of estate	15000
Loss of love and affectioin	80000

Head	Amount (Rs.)
Total	1632000

12.Hence, the total compensation payable in this case is Rs.16,32,000/-.

13.The interest awarded by the Tribunal at the rate of 7.5% per annum is unaltered. Accordingly, award of the Tribunal (i.e.,) Rs.9,94,000/- is enhanced to Rs.16,32,000/-, fixing the entire liability on the offending vehicle, belonged to the 1st respondent. Out of the award amount, the appellants/claimants are entitled to get equal share.

14.The appellants/claimants are directed to pay the requisite court-fee, if any, within a period of two weeks from the date of receipt of a copy of this order, failing which the amount enhanced would not accrue to the claimants.

15.The 2nd respondent/Insurance company is directed to deposit the entire award amount along with interest and costs as per the modified award passed by this Court, within a period of four weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any. On such deposit being made, the Tribunal is directed to transfer equal share of the modified award amount along with interest and costs to the personal bank accounts of the respective appellants/claimants through RTGS within a period of one week thereon.

16.Accordingly, this appeal is partly allowed, enhancing the award of the Tribunal from Rs.9,94,000/- to Rs.16,32,000/- with interest. No costs.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

sai

To

The Motor Accident Claims Tribunal/
Special Subordinate Court,
Coimbatore.

Copy To

The Section Officer,
V.R. Section, High Court,
Madras.(2 copies)

+1cc to Mr.C.R.Prasanan, Advocate, S.R.No. 87576
+1cc to Mr.M.B.Gopala Associates, Advocate, S.R.No. 88548

C.M.A.No.1826 of 2018

KJ(CO)
GN(12/02/2019)