IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 04-04-2018

CORAM

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

AND

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

C.M.A.No.2648 OF 2017

The New India Assurance Company Ltd.
Villupuram -605 602 ... Appellant/Respondent-3

-vs-

1.Suma
2.Arjun
3.E.Padmavathiammal
4.K.Madavan Nair ... Respondents 1 to 4/
Petitioners 1 to 4
5.K.Sundarajan ...5th Respondent/1st Respondent

6.The Chairman,
SIGA College of Management
& Compuer Sciences.
Kampiampuliyur,
Mundiampakkam,
Villupuram District. ... 6th Respondent/2nd Respondent

Appeal against the award, dated 26.10.2015, passed in M.C.O.P.No.266 of 2011, on the file of Motor Accident Claims Tribunal, IV Additional District Judge, at Bhavani.

For appellant : Mr.J.Chandran

For respondents 1 to 4 : Mr.Ma.P.Thangavel

JUDGMENT

(Judgment of the Court was delivered by N.Kirubakaran,J)

This appeal has been filed against the award, dated 26.10.2015, passed in M.C.O.P.No.266 of 2011, on the file of Motor Accident Claims Tribunal, Bhavani, for a sum of Rs.45,62,500/-, towards compensation for the death of one M.Sudhakaran, aged about 51 years, a Scientist and Manager in

Centronics Controls, who was allegedly earning about Rs.2,00,000/- per month, and had died in the accident that took place on 01.11.2010, when he was travelling in his car from Kumbakonam to Chennai, on the main road at Villupuram and hit by a bus coming in the opposite direction, belonging to the sixth respondent, driven by the fifth respondent, insured with the appellant-insurance company.

2. Mr.J.Chandran, learned counsel for the appellant would submit that the insurance company has filed the appeal only questioning the quantum of compensation, as the monthly income of the deceased has been determined contrary to the evidence adduced, with a deduction of one-fourth towards personal expenses without any proof regarding four persons as dependants, and awarding compensation contrary to the Constitution Bench decision of the Hon'ble Supreme Court in National Insurance Company Ltd. v. Pranay Sethi and Others, (2017) 2 TN MAC 609 (SC), and also Rs.20,00,000/- towards loss of special skill of the deceased. The learned counsel would particularly point out that the average income for the past three years before the death of the deceased ought to have been taken into consideration by the Tribunal while determining the loss of income of the deceased, whereas, the Tribunal took into account the last year's i.e., 2009-2010 income, and, based on that, determined the monthly income of the deceased at Rs.25,000/-. He would further submit that Ex.P-8/Legal Heir Certificate would show only three persons as dependants, whereas, the claimants are four persons and the Tribunal, believing the same, erroneously deducted one-fourth towards personal expenses instead of one-third. On the basis of the above contentions, he would seek to reduce the compensation awarded by the Tribunal.

3. On the other hand, Mr.Ma.P.Thangavel, learned counsel for respondents 1 to 4 – claimants, would submit that the Tribunal has rightly determined the monthly income of the deceased at Rs.25,000/-, relying upon the judgment of the Hon'ble Supreme Court in (2015) 1 TN MAC 785 and, therefore, the award passed by the Tribunal is perfectly in order and it cannot be faulted. As far as Ex.P-8/Legal Heir Certificate is concerned, the learned counsel would submit that though the legal heirs have been shown as three therein, since father is the second class heir, he is not shown in the document and, in any event, the eighty year old father shall be a dependant. Accordingly, he would seek confirmation of the award passed by the Tribunal.

4. A perusal of the records would reveal that the deceased filed income tax returns and it is evident from Exs.P-16 to P-18 / ITRs that he filed returns for a sum of

Rs.2,18,862/-, Rs.2,81,068 and Rs.2,92,276/- for the years 2007-2008, 2008-2009 and 2009-2010 respectively. The Tribunal took the last year's income of the deceased as per Ex.P-18 as Rs.2,92,276/- and monthly income as Rs.24,356/- and rounded of the same to Rs.25,000/-. The said determination is based on a judgment of the Hon'ble Supreme Court in Shashikala and Others v. Gangalakshmamma and Another, reported in 2015 (1) TN MAC 785 (SC), in which, the Hon'ble Supreme Court set aside the average monthly income taken by the High Court and calculated the monthly income based on the last year's income. Therefore, the said determination of the income of the deceased by the Tribunal at Rs.25,000/- per month cannot be faulted with and the same is confirmed.

5. As rightly pointed out by Mr.Ma.P.Thangavel, learned counsel appearing for respondents 1 to 4, no future prospects have been added by the Tribunal while determining the monthly income. As per the Constitution Bench judgment in the case of Pranay Sethi, referred to above, 10% of the income has to be added towards future prospects, as the deceased was about 51 years as per Exs.P-16 to P-18, Income Tax Returns. Accordingly, if 10% is added, the monthly income of the deceased would be Rs.25,000/- + 10% = Rs.27,500/-. From that, 10% has to be deducted towards income-tax. After deduction of income-tax, the monthly income of the deceased would be Rs.24,750/-.

6. The Tribunal, considering the number of claimants as 4, deducted one-fourth towards personal expenses as per the judgment of the Hon'ble Supreme Court in Sarla Verma v. Delhi Transport Corporation, 2009 (6) SCC 121. However, it is disputed by Mr.J.Chandran, learned counsel for the appellant, stating that Ex.P-8/Legal Heir Certificate names only three persons as legal heirs and, without any proof, the claim petition has been filed and, in the absence of any proof regarding the number of dependants as four, one-fourth cannot be deducted. No doubt, Ex.P-8 speaks about three persons as legal heirs. The fourth respondent-father has been shown as petitioner-claimant number No.4 in the claim petition. As per the Hindu Succession Act, father is only a second class legal heir and hence the second class legal heir would not be accommodated in the legal heir certificate, especially, when the first class legal heirs are available. It is not as if without any proof the claim has been made. P.W.1, who is the first respondent herein, in her evidence, has categorically stated that the claimant No.4-fourth respondent herein is her father-in-law. No cross-examination has been done, impeaching that peace of evidence. Therefore, this Court confirms the one-fourth deduction made by the Tribunal. If one-fourth is deducted, the loss of monthly income of the deceased would be Rs.24,750/- minus 1/4 (6187.50) = Rs.18,562.50/-.

7. The Tribunal has rightly applied the multiplier '11' as per the age of the deceased at 51, based on Exs.P-16 to P-18/ITRs, and, therefore, the loss of income of the deceased would be Rs.25,000/- + 10% - 10% - 1/4 x 12 x 11 = Rs.24,50,250/-. Rs.1,00,000/- awarded towards loss of consortium and Rs.2,00,000/- awarded towards loss of love and affection by the Tribunal have been reduced to Rs.40,000/- and Rs.75,000/- respectively, as per the judgment of the Supreme Court in the case of Pranay Sethi, cited supra. Rs.20,000/- awarded by the Tribunal towards transportation is deleted. Rs.10,000/- awarded by the Tribunal towards funeral expenses is enhanced to Rs.15,000/-. Rs.5,000/- awarded by the Tribunal towards damage to articles and clothes is confirmed. No amount has been awarded by the Tribunal towards ''loss of estate''. Therefore, a sum of Rs.50,000/- is awarded under the said head.

8. Accordingly, we rework the award as under :

Loss of income	-	Rs.24,50,250/-
Loss of consortium	-	Rs. 40,000/-
Loss of love and affection	-	Rs. 75,000/-
Funeral expenses	-	Rs. 15,000/-
Damage to clothes	-	Rs. 5,000/-
Loss of estate	-	Rs. 50,000/-
		Rs.26,35,250/-

Thus, we modify the award of the Tribunal from Rs.45,62,500/- to Rs.26,35,250/-. The rate of interest awarded by the Tribunal at 7.5% per annum is confirmed. The modified award amount shall be shared by the respondents-claimants, as per the ratio adopted by the Tribunal.

9. Mr.J.Chandran, learned counsel for the appellant, has submitted that a sum of Rs.36,00,000/- has been deposited by the appellant out of the award of Rs.45,62,500/-. Therefore, the appellant-insurer is directed to deposit the balance amount as per the order of this Court, if any, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the entire amount shall be apportioned as per the ratio laid down in Sarla Varma's case, cited above. The Tribunal is directed to transfer the shares of the respondents/claimants to their respective accounts through RTGS within one week thereafter. It is also made clear that the balance amount, if any lies in excess of the order of this Court, shall be refunded to the appellant within a period of one week thereafter.

10. It is surprising to note that a sum of Rs.20,00,000/- has been awarded by the learned Judge towards "loss of special skill". It is not known as to how the said

amount was awarded, when there is no provision for the same under the statute. It is, for the first time, this Court comes across this kind of award for "loss of special skill of the deceased". Certainly, it is towards the loss of earning power and under other heads, the compensation is awarded. When that be so, the award of Rs.20,00,000/- awarded by the learned Judge towards ''loss of special skill'' is alien to the compensation given to the road accident victims. Therefore, the said amount has to be deleted and is, accordingly, deleted.

11. One more aspect this Court has to point out is, as per Ex.P-8/Legal Heir Certificate, the claimants are residents of Madras and the accident took place in Villupuram District. It is perplexing to note, why the case has been filed before the Motor Accident Claims Tribunal/IV Additional District Court, Bhavani. Is it probably for getting the award of Rs.20,00,000/- towards ''loss of special skill'' ?

12. Regarding award of Rs.20,00,000/- towards "LOSS OF SPECIAL SKILL" by the learned Judge, the Registry is to get response from the Judicial Officer on the administrative side.

13. Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, the connected C.M.P.No.14612 of 2017 is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1.Motor Accident Claims Tribunal-cum-
IV Additional District Judge,
Bhavani.

2.The Section Officer,
'B' Section, High Court,
Madras.

Copy to

The Registrar General,
High Court, Madras.(Kind Attention Para 12 of the Order)

+1cc to Mr.P.Thangavel, Advocate Sr.25161
+1cc to Mr.J.Chandran, Advocate Sr.24891

C.M.A.No.2648 OF 2017

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srg 26/06/2018