BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.04.2018

[Judgment Reserved on 23.03.2018]

CORAM:
THE HONOURABLE MR.JUSTICE A.M.BASHEER AHAMED

C.M.A(MD)No.1252 of 2017

1.Selvamani
2.Sudhakar
3.Sudharsan
4.Sumithra
5.Subashini : Appellants / Petitioners

Vs.

1.Anushya

2.National Insurance Company Ltd.,
Rep.by its Divisional Manager
No.62 D.S.R.Periya Street,
Kumbakonam.

3.Gurumoorthy : Respondents / Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the Judgment and Decree dated 06.10.2016 made in M.C.O.P.No.329 of 2014, on the file of the Motor Accidents Claims Tribunal, Principal Sub Court, Kumbakonam.

For Appellant : Mr.S.Siva Thilagar
For Respondent-2 : Mr.V.J.Kumaravel

JUDGMENT

This Civil Miscellaneous Appeal has been preferred against the Judgment and Decree dated 06.10.2016 made in M.C.O.P.No.329 of 2014, on the file of the Motor Accidents Claims Tribunal, Principal Sub Court, Kumbakonam.

2. The appellants are the claimants in M.C.O.P.No.329 of 2014, on the file of the Motor Accidents Claims Tribunal, Principal Sub Court, Kumbakonam, filed under Section 166 of the Motor Vehicles Act, 1998, claiming compensation of Rs.30,00,000/- together with 24% interests and costs for the death of Deviha,

wife of the first claimant, who died in a fatal accident held on 25.07.2014, at about 8.30 p.m., due to rash and negligent driving of the minibus, bearing Registration No.TN-68-D-2146, driven by its driver, owned by the first respondent and insured with the 2nd respondent, dashed behind the TVS Super XL, two wheeler, bearing Registration No.TN-68-F-0240 in which, the deceased travelled as pillion rider, driven by the first claimant and owned by the 3rd respondent on the date of accident.

3. The owner of the said mini bus / first respondent, was set ex-parte before the Tribunal. The 2nd and 3rd respondent contest the said claim by filing counter statement.

4. First claimant is the husband of the deceased and was examined as P.W.1. Exs.P1 to P16 were marked as exhibits, on the side of the claimants. The Junior Assistant working at RTO office in Kumbakonam was examined as R.W.1 and Exs.R1 and R2 were marked as exhibits on the side of the 2nd respondent / insurer. Owner of the mini bus was not examined to prove negligence and rash driving of the moped driven by P.W.1 on the date of accident, though P.W.1 was admitted that he was fined for non-possession of the driving license. The 2nd respondent did not take any steps to give notice to the first claimant / P.W.1 and also the owner of the moped / 3rd respondent for production of driving licence before the Tribunal during enquiry.

5. Based on the evidence on record, the Tribunal awarded a sum of Rs.6,70,000/- towards compensation from the date of filing claim petition along with 7.5% interest and costs and directed the 2nd respondent to deposit the above compensation.

6. Aggrieved by the quantum of compensation awarded by the Tribunal, the claimants filed this Civil Miscellaneous Appeal for enhancement of the compensation amount.

7. The learned counsel for the appellant disputes the monthly income of the deceased fixed as Rs.5,000/- instead of Rs.10,000/- after deduction of 1/4th for personal and living expenses and claims Rs.1,00,000/- towards consortium for the first appellant, since he lost his wife at the young stage and claiming future prospects and also Rs.10,000/- towards loss of estate.

8. The counsel for the appellants has given up the claim of compensation of Rs.1,00,000/- each instead of Rs.10,000/- each for love and affection due to the death of deceased, in view of the Judgment of the Apex Court in *National Insurance Company Limited Vs. Pranay Sethi and others* reported in *[2017 (2) TN MAC 609 (SC)]*.

9. The counsel for the appellant filed a memo dispensing

with Notice to R1 to R3 in this appeal and is recorded.

10. The learned counsel appearing for the 2nd respondent / insurer submitted that appellants 2 to 5 / claimants are not the dependents of the deceased, since the daughters were married already and are living with their husbands and the sons are working and getting separate income.

11. The learned counsel appearing for the appellants relies the Apex Court Judgment in *Syed Sadiq Vs. Division Manager, United India Insurance Company Limited* reported in *(2014 1 TN MAC 459)*, fixing the monthly income of the deceased, aged about 48 as Rs.6,000/- per month, without any evidence to prove the monthly income of the deceased.

12. P.W.1 deposed that deceased was doing agricultural and also brickline business and earning a sum of Rs.18,000/- to Rs.20,000/- per month, but in the claim petition it has been stated that the occupation of the deceased prior to her death is brickline business and dry fish sale. No proof of occupation and monthly income of the deceased is produced by the claimants. However, the insurer did not dispute the avocation of the deceased in the evidence of P.W.1. Appellants restricted the monthly income of the deceased as Rs.6500/- per month relying by the *Syed Sadiq* Case referred supra.

13. The learned counsel for the insurer does not raise any objection in fixing the monthly income of the deceased as Rs.6,500/- per month, in view of *Syed Sadiq's* case supra. The claim of future prospects due to the death of the deceased, aged 48 years for 25% in view of the Apex Court Judgment in *Pranay Sethi 's case (cited supra)* case is also not disputed by the respondent side in this appeal.

14. The relevant multiplier for the deceased aged 48 years is 13, as per the Judgment of the Apex Court in *Sarla Verma & Ors Vs. Delhi Transport Corporation and Another*, reported in *(2009 (2) TN MAC 1)*. Hence, the total loss of income due to the death of the deceased in a motor accident is calculated as Rs.6500/- + 25% = Rs.8,125/-. Then, 8125 x 12 x 13 = Rs.12,67,500/-.

15. P.W.1 has categorically admitted that sons are working and getting income and daughters were already married and living with her husband. Hence, the appellants 2 to 5 are not the real dependents of the deceased, though they are the legal heirs. Hence, 1/3rd is to be deducted towards personal and living expenses of the deceased. Therefore, the loss of income, after deducting 1/3rd towards living and personal expenses of the deceased is calculated as Rs.8,45,000/- (Rs.12,67,500 - 4,22,500/-

= Rs.8,45,000/-).

16. The compensation under the conventional heads Rs.15,000/- towards funeral expenses, Rs.15,000/-, towards loss of estate and Rs.40,000/- towards loss of consortium for the living spouse, totally Rs.70,000/- is fixed, as per the Apex Court judgment reported in *[2017 (2) TN MAC 609(SC)]* referred to supra. In the above stated circumstances, the appellants are entitled to get a total compensation of Rs.9,15,000/- (Rs.8,45,000 + Rs.70,000/-) together with interest at the rate of 7.5% and costs.

17. In the result, this Civil Miscellaneous Appeal is partly allowed, enhancing the compensation from Rs.6,70,000/- to Rs.9,15,000/- together with interests at the rate of 7.5% per annum. The Insurance Company / R2 is directed to deposit the entire amount, as per the modified award passed by this Court, with interests and costs, less the amount already deposited, if any, before the Tribunal, within a period of four weeks from the date of receipt of a copy of this order. On such deposit is being made, the first appellant is entitled to Rs.5,15,000/- and appellant Nos. 2 to 5 are entitled to each Rs.1,00,000/- out of the modified enhanced award amount. However, there shall be no order as to costs.

Sd/
Assistant Registrar(CS-III)

/True copy/

Sub Assistant Registrar

To
The the Motor Accidents Claims Tribunal,
Principal Sub Court,
Kumbakonam.

Copy to:
The Record Keeper,
Vernacular Section
Madurai Bench of Madras High Court.
Madurai.(2 COPIES)

+1cc to Mr.V.J.KUMARAVEL, Advocate, SR.No. 63222
+1cc to Mr.S.SIVATHILAKAR, Advocate, SR.No. 63250

C.M.A(MD)No.1252 of 2017
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KK/KKR/SAR-2/25.06.2018/4P-6C/