BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.07.2018

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD).No.881 of 2014

1.Lakshmi
2.Arumugam
3.Saravanan
4.Minor Muthurani ... Appellants/Petitioners/ claimants
(Minor 4th appellant is represented by her mother and natural guardian - 1st appellant herein)

Vs.

1.Subbiah

2. The Branch Manager,
United India Insurance Company Limited,
Karaikudi,
Pudukkottai District. ... Respondents/Respondents

PRAYER:- Appeal filed under Section 173 of the Motor Vehicles Act, against the award, dated 31.10.2006, made in M.C.O.P.No.239 of 2000 on the file of Motor Accident Claims Tribunal / Additional District Judge (Fast Track Court), Pudukkottai.

For appellant : Mr.Babu Rajendran
For 1st respondent : Mr.A.Ramanathan
For 2nd respondent : Mr.N.Sivakumar

JUDGMENT

Heard the learned counsel appearing for the appellants/claimants and the learned counsel appearing for the respondents.

2. It is a case of fatal. The manner of the accident is not in dispute. The Tribunal has awarded a sum of Rs.1,52,000/- as compensation. This appeal has been filed by the appellants/claimants questioning the liability fixed on the first respondent/owner of the vehicle and seeking to enhance the quantum of compensation.

3. The learned counsel appearing for the appellants/claimants would submit that the deceased had travelled in the vehicle owned by the first respondent and insured with the second respondent as

cleaner and due to rash and negligent driving of the driver of the first respondent, the said vehicle capsized, due to which the deceased and one Periyasamy died on the spot and few others, who travelled as coolie sustained injuries. But, the Tribunal, holding that in Ex.P1 - FIR, it has not been stated that the deceased had travelled in the vehicle as cleaner, has erroneously fixed the entire liability on the first respondent / owner of the vehicle alone and exonerated the second respondent from vicarious liability. As the deceased had travelled in the vehicle only as cleaner, the Tribunal ought to have directed the second respondent to pay and recover the award amount from the first respondent.

4. The learned counsel appearing for the appellants / claimants would further submit that though the deceased was earning a sum of Rs.3,000/- as cleaner, the Tribunal has taken only a sum of Rs.15,000/- as the annual income of the deceased and after deducting 1/3rd amount towards personal expenses and adopting the multiplier No.13 based on the age of the mother of the deceased, the Tribunal has awarded only a meagre sum of Rs.1,30,000/- towards loss of income. The father of the deceased was bedridden and hence, the deceased was the only breadwinner of the family. Therefore, he requested this Court to fix a sum of Rs.3,000/- p.m. as the notional monthly income of the deceased By relying upon the decision of the Hon'ble Supreme Court reported in **2017 (2) TN MAC 609 (SC) (National Insurance Company Limited Vs. Pranay Sethi and others)**, the learned counsel appearing for the appellants/ claimants submitted that 40% of the income of the deceased may be added as future prospects. He would further submit that the Tribunal has adopted multiplier No.13 based on the age of the mother of the deceased and as per the decision of the Hon'ble supreme Court in **Sarla Verma and others Vs. Delhi Transport Corporation and another**, reported in **2009 (2) TN MAC 1 (SC)**, multiplier No.18 has to be adopted as per the age of the deceased and thereby, he requested this Court to enhance the award amount.

5. The learned counsel appearing for the second respondent / Insurance Company would submit that the vehicle involved in the accident is a goods carriage vehicle, in which about 11 persons were travelled as gratuitous passengers and in the accident, the deceased and one Periyasamy died on the spot and others sustained injuries. The Tribunal has rightly held that in the FIR, it has not been stated that the deceased had travelled in the vehicle as cleaner and thereby, fixed entire liability on the owner of the vehicle. He would further submit that the Tribunal has already awarded excessive compensation and therefore, the same need not be interfered with. Thus, he prayed to dismiss the appeal.

6. According to the claimants, the deceased was working as cleaner of the vehicle. The said vehicle was used for transporting sound services materials like, tube-light, generator, etc. Some of the persons had also travelled in the said vehicle for doing electrical work as coolie. The claimants have categorically stated

in the claim petition as well as in the evidence that the deceased was working as cleaner in the vehicle in question. But, the Tribunal has held that there is nothing mentioned about the same in the FIR. FIR alone cannot be considered as a material for fixing the liability. It has to be considered in entirety. A perusal of the record would go to show that there is no evidence produced on the side of the Insurance Company in order to rebut the claim of the claimants that the deceased had travelled as cleaner in the vehicle in question. Further, except the claimants, the other persons, who suffered by the very same accident, had not claimed that they were working as cleaner in the vehicle in question. When there is no rebuttal evidence about the avocation of the deceased and when the other persons did not claim that they also travelled as cleaner, this Court is of the view that the second respondent / Insurance Company can be directed to pay the compensation amount to the claimants, on behalf of the first respondent and recover the same from the first respondent, owner of the vehicle.

7. The accident is of the year 1998. The deceased was a bachelor and aged about 20 years at the time of the accident. According to the claimant, the deceased was earning a sum of Rs.3,000/- p.m. as cleaner. As stated by the claimants, the Tribunal had taken only a meagre sum of Rs.15,000/- as the notional annual income of the deceased. Considering the avocation of the deceased and also considering the fact that he was the breadwinner of the family, this Court is of the view that a sum of Rs.3,000/- can be fixed as notional monthly income of the deceased and accordingly, it is fixed. As per Pranay Sethi case, cited supra, considering the age of the deceased, if 40% of income is added as future prospects, the notional monthly income of the deceased comes to Rs.4,200/- (3000 + 1200 = 4200) and annual income comes to Rs.50,400/- (4200 x 12 = 50,400). Since the deceased was a bachelor, if 50% of the annual income is deducted towards personal expenses, the annual loss of income comes to Rs.25,200/-. As per Sarla Verma case, cited supra, considering the age of the deceased multiplier No.18 has to be adopted. If the annual loss of come multiplied with 18, the total loss of income comes to Rs.4,53,600/- (25,200 x 18 = 4,53,600). So far as the award passed under the other heads are concerned, they are confirmed as they are reasonably awarded by the Tribunal. Thus, the total compensation comes to Rs.4,75,600/-.

8. In view of the above, the award is enhanced from Rs.1,52,000/- to Rs.4,75,600/- and the second respondent / Insurance Company is directed to pay the entire award amount with interest at the rate of 7.5% per annum from the date of petition till the date of deposit, on behalf of the first respondent and the second respondent / Insurance Company is permitted to recover the amount from the first respondent as per the decision in ***ORIENTAL INSURANCE COMPANY LIMITED V. NANJAPPAN AND OTHERS,*** reported in ***2004(2) CTC 464.*** The second respondent / Insurance company is directed to deposit the entire award amount ie., Rs.4,75,600/- with accrued interest and costs within a period of eight weeks from the date of

receipt of a copy of this judgment. On such deposit being made, the claimants 1 to 3 are permitted to withdraw the amount now awarded with accrued interest and costs, as apportioned by the Tribunal, by filing a petition before the Tribunal. The share amount of the minor 4th claimant shall be deposited in any one of the nationalised banks initially for a period of two years and renewable thereafter. The guardian of the 4th claimant viz., the first claimant is permitted to get interest in the deposit once in three months without filing any petition before the Tribunal. The claimants are directed to pay the Court fee, if any to be paid for the enhanced amount, within a period of four weeks from the date of receipt of a copy of this judgment.

9. This Civil Miscellaneous Appeal is accordingly allowed. No costs.

Sd/-
Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar(CS-IV)

TO

The Additional District Judge (Fast Track Court),
Motor Accident Claims Tribunal,
Pudukkottai.

Copy To:-

The Record Keeper, V.R. Section,
Madurai Bench of Madras High Court,
Madurai.(2 copies)

+1 CC TO Mr.N.SIVAKUMAR, ADVOCATE IN SR No 74065.
+1 CC TO Mr.BABU RAJENDRAN, ADVOCATE IN SR No. 74170

GCG
TE/SV/SAR-IV : 27/12/2018 : 4P/6C

Judgment in
C.M.A(MD).No.881 of 2014
19.07.2018