BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	07.06.2018
Date of Judgment	22.06.2018

DATED : 22.06.2018

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU
and
THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

C.M.A(MD)No.235 of 2018
and
CMP(MD)No.3481 of 2018

The Royal Sundaram General Insurance Co.,
No.723, Avinashi Road,
Coimbatore. : Appellant /2nd Respondent

Vs.

1.Singaram

2.Amutha : R1 and R2/Petitioners

3.M.Packiyam : R3/1st Respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the fair and decreetal order, dated 25.09.2017 made in MCOP No.59 of 2017 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Sivagangai.

For Appellant : Mrs.K.R.Siva Shankari

For R1 and R2 : Mr.N.Madhavagovindan

For 3rd Respondent : No appearance

J U D G M E N T

(Judgment of the court was delivered by T.KRISHNAVALLI,J)

The Appellant Insurance Company has preferred this appeal challenging the award passed by the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Sivagangai, in MCOP No.59 of 2017, dated 25.09.2017.

2.The brief facts of the case are that on 04.08.2016 at about 8.00 hours, when the deceased Divya along with some students travelling in the Scorpio Car bearing registration No.TN-63-AS-5286 in order to go to school, nearing Nateshapuram on Thondi-Kalaiyarkovil, the driver of the Car drove it in a rash and negligent manner and due to which, it was capsized. In that process, the students travelled in the Car sustained severe injuries and the deceased Divya also sustained grievous injuries and succumbed to injuries. A case stands registered in Crime No.327 of 2016 under Sections 279, 337 and 304(A) IPC by the Kalaiyarkovil Police Station. The claimants are the parents of the deceased and they filed a claim petition in MCOP No.59 of 2017 before the tribunal seeking compensation of Rs.25,00,000/-.

3.The appellant filed a counter affidavit denying the allegations made in the claim petition and they also disputed the age, income and avocation of the deceased.

4.Before the Tribunal, the claimants have examined two witnesses and marked Exs.P1 to P8. On the side of the Insurance Company, no witness was examined and no document was marked. The Tribunal, after considering the oral and documentary evidence adduced by the parties, came to the conclusion that the driver of the Car was responsible for the accident and awarded compensation of Rs.15,70,000/- together with interest @ 7.5% p.a.

5.Learned counsel for the appellant would submit that the award passed by the Tribunal is excessive and it has to be reduced. On the other hand, the learned counsel for the claimants argued in support of the judgment of the tribunal.

6.We have heard both sides and perused the materials available on record.

7.In the instant case, it is not in dispute that the deceased was 16 years old at the time of accident and she was a student. The Tribunal fixed notional monthly income at Rs.10,000/- and by adding 50% towards future prospects and by applying proper multiplier '16', awarded Rs.28,80,000/- towards the annual income of the deceased. Since the deceased is an unmarried girl, the tribunal has deducted 50% from the total income, thereby calculated the loss of income at Rs.14,40,000/-. Further, the Tribunal awarded Rs.5,000/- towards Transportation; Rs.25,000/- towards funeral expenses and Rs.1,00,000/- towards loss of love and affection. In total, the Tribunal has awarded Rs.15,70,000/- as compensation.

8.Perusal of the records would reveal that the deceased Divya has scored 401 out of 500 and if she is alive, she would become a Doctor or an Engineer or she will get some attractive job.

9.It is mainly argued on the side of the appellant Insurance Company that the income arrived at by the tribunal is not justified for an unmarried girl at the age of 16 years and the deceased was a student before the accident and hence, the income fixed by the tribunal is not correct. For that, the learned counsel for the appellant relied upon the judgment reported in 2018 SAR (Civil) 553 (Shri Nagar Mal and Others vs. The Oriental Insurance Company Ltd and Others).

10.On coming to the instant case on hand, the deceased was a girl and in view of the recent decision reported in 2018 SAR (Civil) 553 (Shri Nagar Mal and others vs. The Oriental Insurance Company Ltd and others), the monthly income of the deceased is fixed at Rs.6,000/-. Having due regard to the judgment delivered by the Hon'ble Apex Court in the case of National Insurance Company Limited Vs. Pranay Sethi (2017)13 SCALE 12 and Sarla Verma Vs. Delhi Transport Corporation [(2009)6 SCC 121], the correct multiplier should be having regard to the age of the deceased and an addition of 40 percent towards future prospects would also be warranted. Since the deceased is an unmarried girl, 50% has to be deducted towards her personal and living expenses. Considering the above facts, it would be appropriate to fix notional income at Rs.6,000/- and by adding 40% toward future prospects, the monthly income is arrived at Rs.8,400/- (Rs.6,000/- + Rs.2,400/-). Since the deceased was an unmarried woman, after deducting 50% towards her personal and living expenses, loss of income arrived at Rs.4,200/- per month. By applying proper multiplier '16', this Court awards Rs.8,06,400/- [Rs.4,200/- x 12 x 16] towards loss of income. In addition to that, the claimants are entitled to Rs.70,000/- towards conventional damages. Considering the above facts, this Court is of the opinion that as per the decisions of the Hon'ble Apex Court referred supra, the award of the tribunal requires modification. The compensation awarded by the tribunal is modified as hereunder:-

S.No	Head	Amount awarded by the tribunal [Rs.]	Amount awarded by this court [Rs.]
01.	Loss of Income	14,40,000/-	**Rs.8,06,400/-**
02.	Loss of love & affection	1,00,000/-	30,000/-
03.	Transportation	5,000/-	10,000/-
04.	Funeral expenses	25,000/-	15,000/-
05.	Loss of Estates	-	15,000/-
	Total	Rs. 15,70,000/-	**Rs.8,76,400/-**

11.In the result, the Civil Miscellaneous Appeal is partly allowed. The award amount of Rs.15,70,000/- is reduced to Rs.8,76,400/-. The interest awarded by the tribunal is maintained. The appellant Insurance Company is directed to deposit the modified award amount with accrued interest and costs, less the amount already deposited to the credit of claim petition, within a period of four weeks from the date of receipt of a copy of this judgment. On such the compliance, the claimants are permitted to get equal share with accrued interest and costs. The excess amount, if any, shall be refunded to the appellant Insurance Company. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To

1. The Chief Judicial Magistrate/
   The Motor Accident Claims Tribunal,
   Sivagangai.

2. The Record Keeper,
   Vernacular Section,
   Madurai Bench of Madras High Court,
   Madurai. **(2 Copies)**

+1CC to Mr.S.SRINIVASA RAGHAVAN, Advocate, SR.No.69553
+1CC to Mr.N.Madhavagovindan, Advocate, SR.No.69352

Judgement made
in C.M.A(MD)No.235 of 2018
22.06.2018

ER
ES/PN/SAR 4/09.07.2018/4P/6C