BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.10.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.(MD)No.849 of 2018
and
C.M.P(MD)No.9349 of 2018

The Regional Manager,
National Insurance Co. Ltd.,
Manojiappa Veethi,
Thanjavur. ... Appellant/Respondent No.2

Vs.

1.Minor Niwas
2.Minor Nitthis
3.Minor Niwan
4.Tamilselvi
(Minors 1 to 3 respondents are
rep. by their mother 4th respondent) ...Respondents/Petitioners
5.Karumbal
6.Gownammal ... Respondents 5 & 6/
Respondents 1 & 3

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award made in M.C.O.P.No.1073 of 2016, dated 04.05.2017, passed by the Motor Accident Claims Tribunal (Special District Court for MCOP Cases), Thanjavur.

For Appellant : Mrs.K.R.Shiva Shankari
For R1 to R4 : Mr.R.Murugan

JUDGMENT

Being aggrieved by the award passed by the Motor Accident Claims Tribunal (Special District Court for MCOP Cases), Thanjavur, in M.C.O.P.No.1073 of 2016, dated 04.05.2017, the appellant Insurance Company has filed the present appeal.

2.The present appeal is filed by the second respondent Insurance Company challenging the quantum of compensation granted to the respondents 1 to 4 and 6. According to the learned counsel for the appellant, the Tribunal erred in fixing the monthly income of the deceased at Rs.6,500/- and granting 50% future prospects, which are excessive. The Tribunal awarded excessive amount under different heads, which are contrary to the judgment of the Hon'ble Apex Court reported in ***2017(2) TNMAC 609 (SC) [National Insurance Co. Ltd., v. Pranay Sethi]***.

3.Per contra, the learned counsel appearing for the respondents 1 to 4 contended that the respondents 1 to 4 have lost their father and husband at an early age and the amount awarded by the Tribunal is not excessive and prayed for dismissal of the appeal.

4.I have heard the learned counsel appearing for the appellant and the respondents 1 to 4 and perused the materials available on record.

5.From the materials on record, it is seen that the deceased was ironing master and aged about 34 years at the time of accident. Considering this fact, the Tribunal fixed the notional income of the deceased at Rs.6,500/- per month, which is not excessive. But the Tribunal erred in granting 50% enhancement towards future prospects. As per the judgment of the Hon'ble Apex Court reported in ***2017(2) TNMAC 609 (SC) [National Insurance Co. Ltd., v. Pranay Sethi]*** the respondents 1 to 4 and 6 are entitled only 40% enhancement towards future prospects. Accordingly, the loss of income to the family of the deceased is calculated as follows:-

Rs.6,500 + 2,600 (40% of 6,500/-) =9,100 - 2.275 (1/4thof 9,100) =6,825 x 12 x 16 =13,10,400/-

6.The Tribunal has awarded excessive amount towards funeral expenses and loss of consortium and the same is reduced to Rs.40,000/- towards loss of consortium and Rs.15,000/- towards funeral expenses. A sum of Rs.1,00,000/- each granted for love and affection to the respondents 1 to 3 are set aside. A sum of Rs.50,000/- awarded to the 6th respondent towards love and affection is reduced to Rs.25,000/-. The Tribunal has granted a sum of Rs.10,000/- towards loss of estate and the same is enhanced to Rs.15,000/-.

7. In view of the settled position of law, this Court modifies the award of the Tribunal by reducing the compensation, as under:-

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	For loss of income	14,03,904	13,10,400	reduced
2.	For funeral expenses	25,000	15,000	reduced
3.	For loss of estate	10,000	15,000	enhanced

4.	For Transportation	10,000	10,000	confirmed
5.	For loss of consortium to the first respondent	1,00,000	40,000	reduced
6.	For loss of love and affection to respondents 2 to 4	3,00,000	-	Set aside
7.	For loss of love and affection to the 6th respondent	50,000	25,000	reduced
	Total	Rs.18,98,904	Rs.14,15,400	By reducing a sum of Rs.4,83,504/-

8. In the result,

(i) This Civil Miscellaneous Appeal is partly allowed, reducing the award of the Tribunal from Rs.18,98,904/- (Rupees Eighteen Lakhs Ninety Eight Thousand Nine Hundred and Four only) to a sum of **Rs.14,15,400/-** (Rupees Fourteen Lakhs Fifteen Thousand and Four Hundred only) along with interest at the rate of 7.5% per annum from the date of petition till date of realisation and costs;

(ii) The appellant Insurance Company is directed to deposit the award amount along with 7.5% interest and costs to the credit of M.C.O.P.No.1073 of 2016, on the file of the Motor Accident Claims Tribunal (Special District Court for MCOP Cases), Thanjavur, within a period of **eight weeks** from the date of receipt of copy of this judgment;

(iii) On such deposit being made, the 4th claimant & third respondent/respondents 4 & 6 are permitted to withdraw the award amount as per the ratio of apportionment made by the Tribunal, by making necessary application before the Tribunal. The Tribunal shall deposit the share of the minor claimants 1 to 3/respondents 1 to 3 in any one of the Nationalized bank in a Fixed Deposit initially for a period of three years and renewable thereafter, till the minor attains majority. The mother of the minor claimants/4th respondent is permitted to withdraw the accrued interest once in three months directly from the bank. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (AD-I)

/True Copy/

Sub Assistant Registrar (CS-IV)

To

1. The Special District Judge for MCOP Cases,
   Motor Accident Claims Tribunal,
   Thanjavur.

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

+ 1 CC TO Mr.S.SRINIVASA RAGHAVAN, ADVOCATE IN SR No. 91215
+ 1 CC TO Mr.R.MURUGAN, ADVOCATE IN SR No. 91011

AM
TE/BK/SAR-4 : 23/01/2019 : 4P/6C

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