IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH
AND
THE HONOURABLE MR. JUSTICE C.SARAVANAN

C.M.A. No. 3220 of 2013
and
Cross.Obj.No.25 of 2014

National Insurance Company Limited,
Rajaji Street,
Kangaeyam ... Appellant in CMA 3220/13
& 1st respondent in Cros.Obj.25/14

Vs.

1.Umarani
2.Minor. Shruthi
3.Saminathan
4.Valliyamm ... Respondents 1 to 4 in
CMA 3220/13 and Cross Objectors

5.Senthil
6.Mani ... 5th and 6th Respondents
CMA 3220/13& respondents 2 and 3
in Cros.Obj.25/14

Prayer in CMA 3220 of 2013: Appeal filed under Section 173 of the Motor Vehicles Act,1988 against the judgment and decree passed in M.A.C.T. O.P.No.6 of 2011 dated 09-04-2012 on the file of the Motor Accidents Claims Tribunal, Principal Sub-Ordinate Court, Tiruppur.

Prayer in Cross.Obj.No.25 of 2014: Cross objection filed under Order 41 Rule 22 C.P.C against decree and judgment in M.C.O.P.No.6 of 2011 dated 09.04.2012 on the file of MACT/Principal Sub-Court at Tiruppur.

For Appellant in CMA No.3220/13 & in 1st respondent in Cros.Obj.No.25/14 : M/s.N.B.Surekha

For respondents 1 to 4 : Mr.MA.P.Thangavel
in CMA No.3220/13
and appellants in
Cros.Obj.No.25/14

COMMON JUDGMENT
(Delivered by M.M.Sundresh,J.)

This appeal and cross objection are preferred only against the quantum of compensation awarded by the Tribunal.

2. The accident occurred on 07.12.2010. The deceased died on 13.12.2010. The claimants 1 to 4 are widow, child and the aged parents. A claim was made for a sum of Rs.1 crore. The age of the deceased was 41 years at the time of accident. The Tribunal awarded Rs.49,90,000/- by fixing the income at Rs.4,00,000/- per annum, which is inclusive of Rs.3,00,000/- which has been arrived at based upon the Income Tax returns with respect to the gross income and thereafter added Rs.1,00,000/- towards the agricultural income. Deduction of one-fourth was made towards personal expenses and accordingly Rs.3,00,000/- was arrived at as annual contribution to the family. After adding the medical expenses and amounts under conventional heads, the aforesaid amount has been arrived at. Now, both the appeal and cross-appeal are with respect to the quantum as aforesaid.

3. Learned counsel appearing for the appellant would submit that the Tribunal has committed an error by adding agricultural income once again over and above the gross income. It is further submitted that no deduction has been made towards income tax.

4. Learned counsel appearing for the claimants/cross objectors would submit that the agricultural income has been rightly added. It is further submitted that under conventional heads lesser amount has been granted. It is the further case of the learned counsel that 10% deduction will have to be made with respect to the tax payable as per law which even as per the tax paid for the relevant assessment year was only Rs.6480/-.

5. The Tribunal, in our considered view, committed an error in fixing Rs.4,00,000/- as the annual income by adding agricultural income of Rs.1,00,000/-. The gross total income as per the statement of total income is Rs.2,93,645/-. After making deductions under Chapter VIA of the Income Tax Act, 1961, to the tune of Rs.1,02,192/-, the total income was arrived at Rs.1,91,453/-. The agricultural income was shown as Rs.1,70,000/-. Accordingly, the total tax paid was Rs.6480/-. Therefore, this is the amount which is liable to be deducted, as was actually done by the Income Tax Department. Therefore, we are of the view that while the Tribunal was wrong in fixing the

income at Rs.4,00,000/- as against Rs.3,00,000/-, the deduction of 10% will have to be made only for a sum of Rs.6,480/-. As fairly submitted by the counsel for the appellant, the issue of future prospects has not been considered by the Tribunal and, therefore, 25% will have to be added as per the Constitution Bench judgment in National Insurance Company Ltd. v. Pranay Sethi, reported in (2017) 16 SCC 680.

6. Accordingly, we arrive the total income as follows: The Gross Total Income is Rs.2,93,645/-. To the said amount 25% is added towards future prospects (i.e., Rs.73,411/-) and the total income comes to Rs.3,67,056/-. Though in law deduction also will have to be made against the future prospects, considering the facts of the case, we are not inclined to undertake the aforesaid exercise as the amount would be very meager. From the said amount Rs.6,480/-, being the income tax paid, is deducted and the income arrives at Rs.3,60,576/-. From the said amount, one-fourth is deducted towards personal expenses of the deceased, i.e., Rs.90,144/-, and by applying multiplier '14', the amount arrived is Rs.37,86,048. To the said sum, medical expenses of Rs.1,84,563/- is added. Towards the conventional damages, we fix loss of consortium at Rs.40,000/-; loss of love and affection for the minor children and the aged parents at Rs.1,25,000/- in all; funeral expenses at Rs.15,000/-; loss of estate at Rs.15,000/- and for transportation at Rs.20,000/-. Thus, a total sum of Rs.41,85,611/- has been arrived at, which we are inclined to round it off to Rs.42,00,000/-. In fine, the appeal is allowed by modifying the award passed by the Tribunal to Rs.42,00,000/-. The cross-appeal stands disposed of accordingly.

7. The excess amount deposited is permitted to be withdrawn by the appellant after paying the aforesaid amount to the claimants. Insofar as minor child's share is concerned, the share amount to be deposited in a Nationalized Bank for a period of three years, renewable thereafter, and the first claimants (wife of the deceased) is permitted to withdraw the accrued interest once in three months. Since the Tribunal itself has permitted the appellant to recover the compensation amount from the owner, we are not inclined to disturb the aforesaid finding.

8. The appeal stands allowed to the aforesaid modification and the cross-appeal stands disposed of in the above terms. No costs. Consequently, connected M.P.No.1 of 2013 is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

ssm

To:

The Motor Accidents Claims Tribunal,
Principal Sub-Ordinate Court,
Tiruppur.

Copy To: The Section Officer,
V.R.Section, High Court, Madras.

+1 cc to M/s.Ma.P.Thangavel, Advocate, Sr.No. 15030
+1 cc to M/s.N.B.Surekha, Advocate, Sr.No. 14454

C.M.A. No. 3220 of 2013
and
Cross.Obj.No.25 of 2014

CSL/30.05.2019