

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2019

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.1164 of 2018
and
C.M.P.No.9579 of 2018

Bharti AXA General Insurance Co. Ltd.,
No.965, 2nd Floor,
Avinashi Road, Coimbatore 641 037. ..Appellant / 2nd Respondent

Vs

1.Saraswathi, 49 years
W/o.Late.Palanisamy

2.Shanthammal, 30 years
W/o.Late.Sagadevan

3.Minor S.Dhanushkumar, 12 years,
S/o.Sagadevan

4.Minor.S.Sangeetha, 9 years,
Minors 3 & 4 are represented by their
guardian & mother Shanthammal
All are residing at Door No.49,
Thaluthalai Arumbavur Post,
Perambalur.

5.S.Senthilkumar,
S/o.Subramani Gounder,
Residing at Door No.33, Indira Nagar,
North Pet, Sathiyamangalam 638 401. ..Respondents/Petitioners &
1st Respondent

PRAYER : Civil Miscellaneous Appeal filed against the Award and
Decree dated 29.04.2017 made in MCOP.No.1748 of 2013 on the file
of the Motor Accidents Claims Tribunal, II Additional District
and Sessions Court, Tiruppur.

For Appellant :Mr.S.Arun Kumar

For Respondents :Mr.K.Myilsamy (for R1 to R4)

J U D G M E N T

(Judgment of the Court was delivered by N.KIRUBAKARAN, J)

The appeal has been preferred by the insurance company, against the award of Rs.24,00,000/-, for the death of one Mr.P.Sagadevan, aged about 33 years, singer Tailor and printing incharge in Adarsh Company, Tirupur, allegedly earning a sum of Rs.15,000/- per month, in the accident occurred on 19.08.2013, when the deceased was riding his motorcycle, which was hit down by the Tata Ace auto, insured with the appellant/Insurance Company, driven by the 5th respondent/driver cum owner.

2.Heard Mr.S.Arun Kumar, learned counsel appearing for the appellant and Mr.K.Myilsamy, learned counsel appearing for the respondent.

3.The Tribunal based on PW2's/eyewitness's evidence and Ex.P.1/FIR, found that the accident occurred because of the rash and negligent driving of the offending vehicle, insured with the appellant/insurance company, in the absence of any contra evidence. Therefore, the said finding given by the Tribunal is correct.

4.As far as income part is concerned, it is proved by Ex.P.6/Salary certificate and Ex.P.7/Bank pass book of the deceased that he was employed in Adarsh Company, Tirupur and was earning more than a sum of Rs.10,000/-. Since Ex.P.7 does not show any permanent income month wise, the Tribunal rightly determined the monthly income of Rs.10,000/- as the income cannot be given below Rs.10,000/-. Therefore, Rs.10,000/- determined by the Tribunal as monthly income is confirmed. As the deceased was aged about 33 years, as per Ex.P.2/Post mortem certificate, the Tribunal rightly applied multiplier "16". The Tribunal added 50% towards future prospects. Since the age of the deceased was 33 years, as per the Constitution Bench's judgment of the Honourable Apex Court in National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC), 40% has to be added towards future prospects. Therefore, the loss of income would be at Rs.14,000/- [Rs.10,000/- + 40% of Rs.10,000/-]. Since the size of the family is four, the Tribunal rightly deducted 1/4th towards personal expenses. After deducting 1/4th towards personal expenses and applying multiplier, the loss of contribution would be at Rs.20,16,000/- {[14,000 (-) ¼ of Rs.14,000] x 12 x 16}.

5.Loss of consortium:

The Tribunal awarded a sum of Rs.1,00,000/- to the 2nd respondent/wife under this head. The same is reduced to

Rs.40,000/- as per the Constitution Bench's judgment of the Honourable Apex Court in National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC).

6. Loss of love and affection:

A sum of Rs.25,000/- awarded under this head to the 1st respondent. The same is confirmed. The Tribunal awarded a sum of Rs.1,00,000/- to the 3rd and 4th respondents under this head. The same is enhanced to Rs.1,00,000/- each to the 3rd and 4th respondents, as they were minors, aged about 12 years and 9 years only. They lost father's love and affection throughout their life. The amount awarded towards love and affection is akin to the amount awarded towards loss of consortium. Therefore, the total amount awarded under this head is Rs.2,25,000/-

7. Transportation:

The Tribunal awarded a sum of Rs.10,000/- under this head. The same is confirmed.

8. Funeral expenses:

The Tribunal awarded a sum of Rs.25,000/- under this head. The same is reduced to Rs.15,000/-

9. Loss of estate:

No amount was awarded under this head. Hence, this Court awards a sum of Rs.15,000/- under this head.

Head	Amount (Rs.)
Loss of contribution	2016000
Loss of consortium	40000
Loss of love and affection	225000
Transportation	10000
Funearl expenses	15000
Loss of estate	15000
Total	2321000

10. Hence, the total compensation payable in this case is Rs.23,21,000/-. The interest awarded by the Tribunal at the rate of 7.5% per annum is confirmed.

11. The apportionment of the modified award amount shall be as per the ratio fixed by the Tribunal. Since the award amount

has been reduced, the amount reduced as per the order of this Court to be adjusted only from the share of the 1st and 2nd respondents as per the ratio fixed by the Tribunal. Since the appellant already deposited the entire amount as per the award passed by the Tribunal, the Tribunal is directed to transfer respective shares of the 1st and 2nd respondents along with interest to their respective bank accounts, through RTGS, within a period of one week from the date of receipt of a copy of this order. As far as the share of the minors' are concerned, the same shall be deposited in interest bearing Fixed Deposit in any one of the Nationalised Banks, till they attain majority. The 2nd respondent is permitted to withdraw interest accruing on such deposits once in three months. The excess amount deposited by the appellant is directed to be refunded to the appellant within a period of one week from the date of receipt of a copy of this order.

12. Accordingly, this appeal is partly allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sai

To

The Motor Accident Claims Tribunal,
II Additional District and Sessions Court,
Tiruppur.

copy to: The Section Officer,
VR Section,
High Court,
Madras. (2 COPIES)

+1 cc to Mr.K.Mayilsamy, Advocate, S.R.No.452

+1 cc to Mr.S.Arunkumar, Advocate, S.R.No.1079

C.M.A.No.1164 of 2018

SR(CO)
SSM(25/03/2019).