IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.1836 of 2018
and C.M.P.No.14228 of 2018

Royal Sundaram Alliance Insurance
Company Limited
Chennai - 600 014. ... Appellant/5th respondent

vs.

1.Sanju (Minor)
2.Harish (Minor)
(Respondents 1 and 2 minors Rep. by
Grand Mother & NF 3rd respondent)

3.Nallammal

4.Munusamy

5.Raghu

6.Balasubramaniam

7.HDFC Ergo General Insurance
Company Limited
Chennai.

8.Mehroonnisha ...Respondents/1 to4 claimants
& respondents 1to4

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree made in MCOP No.24 of 2014, dated 30.04.2015, on the file of the Motor Accidents Claims Tribunal, Special District Court, Dharmapuri.

For Appellant	:	Mr.R.Mohan Babu for Mr.N.Vijayaraghavan
For Respondents	:	Mr.A.Ilaya Perumal for R1 to R4 Mr.K.Poomalai for R7

JUDGMENT

[Judgment of the Court was made by ABDUL QUDDHOSE, J.]

This appeal has been filed the Insurance Company challenging the award dated 30.04.2015 passed by the Motor Accidents Claims Tribunal, Special District Court, Dharmapuri in M.C.O.P.No.24 of 2014.

Brief facts leading to the filing of the instant appeal:

2. A person by name Shanmugam died on 03.04.2010, as a result of an accident caused by a Lorry, bearing Registration No.KA-01-C-6109, owned by the 8th respondent and insured with the appellant Insurance Company. The accident happened when the deceased along with her husband and friends travelled in a Tata Sumo, bearing Registration No.TN-39-W-3669. They were proceeding to SKS Hospital, Salem for the treatment of the child of the deceased. The insured Lorry, bearing Registration No.KA 01 C 6109 without following the traffic rules and regulations was parked in the highway. As a result of the same, Tata Sumo car dashed against the insured Lorry and as a result of the impact, the deceased as well as four others in the Tata Sumo car sustained fatal injuries. The deceased died on the spot.

3. The dependents of the deceased are his minor children and his parents. They preferred a claim before the Motor Accident Claims Tribunal, Special District Court, Dharmapuri in M.C.O.P.No.24 of 2014 against the owners and insurers of the Tata Sumo as well as the Lorry, seeking compensation of Rs.15,00,000/- (Rupees Fifteen Lakhs only).

4. The Tribunal by its award dated 30.4.2015 in M.C.O.P.No.24 of 2014 held that the appellant/Insurance Company, who is the insurer of the Lorry alone liable and directed them to pay the claimants a some of Rs.59,22,500/- (Rupees Fifty Nine Lakhs Twenty Two Thousand and Five Hundred only) together with interest at 7.5% p.a. from the date of claim till the date of realization. Out of the compensation amount of Rs.59,22,500/- (Rupees Fifty Nine Lakhs Twenty Two Thousand and Five Hundred only), the Tribunal determined the compensation payable to first and second claimants each Rs.25,00,000/-, to the third

respondent a sum of Rs.6,22,500/- (Rupees Six Lakhs Twenty Two Thousand and Five Hundred only) and to the fourth respondent a sum of Rs.3,00,000/- (Rupees Three Lakhs only). By the impugned award, the Tribunal has absolved the liability of 7th respondent Insurance Company, who is the insurer of the Tata sumo.

5. Aggrieved by the award dated 14.11.2017 passed in M.C.O.P.No.24 of 2014, this appeal has been filed by the Insurance Company.

6. Heard Mr.Mohand Babu, learned counsel for the appellant, Mr.A.Ilaya Perumal, learned counsel for respondent Nos.1 to 4 and Mr.K.Poomalai, learned counsel for respondent No.7.

Discussion:

7. According to the appellant, the Tribunal has erroneously fixed the monthly income of the deceased at Rs.12,500/-. It is their case that the alleged employment of the deceased as a Teacher and his salary were not satisfactorily established by the claimants before the Tribunal. It is also their case that the Tribunal erred in applying the 50% enhancement for future prospects and multiplier of 17. Further, it is their case that the compensation awarded by the Tribunal under various heads are excessive.

8. This Court has perused and examined the impugned award as well as the materials and evidence available on record.

9. Before the Tribunal, 39 documents were filed on the side of the claimants, which were marked as Exs.A1 to A39 and six witnesses were examined viz., P.W.1 to P.W.6. On the side of the appellant Insurance Company, as well as the Insurance Company of the Tata Sumo Car, five documents were filed, which are marked as Ex.B1 to B5 and three witnesses were examined viz., R.W.1 to R.W.3.

10. The appellant Insurance Company has not challenged the adverse finding of negligence on the part of the driver of the insured Lorry and therefore, the said finding has attained finality. The appellant Insurance Company has challenged only the quantum of assessment of compensation by the Tribunal.

11. It is the case of the claimants that the deceased was a Government School Teacher, earning a monthly salary of Rs.22,879/- (Rupees Twenty Two Thousand Eight Hundred and Seventy Nine only) which has been established by the claimants through Ex.A-29, which is his salary certificate. The deceased has also studied M. Phil. , which has been established by the

claimants through Ex.A-30 and A-31, which are mark sheets. In April 2010, after the death of the accident, the monthly salary of the deceased was enhanced to Rs.23,800/- (Rupees Twenty Three Thousand Eight Hundred only), which has been established through Ex.A-34, salary certificate. As per Ex.A-34, the gross salary of the deceased is Rs.24,925/- (Rupees Twenty Four Thousand Nine Hundred and Twenty Five only). The claimants have also filed the salary certificate applicable for the deceased if he was alive for the year 2013, which has been marked as Ex.A-35. As per Ex.A-35, the deceased would have earned a monthly income of Rs.33,680/- (Rupees Thirty Three Thousand Six Hundred and Eighty only) , if he was alive. The Tribunal has taken into consideration Exs.A-29, A-30, A-31 and A-34 and only thereafter, assessed the monthly income of the deceased as Rs.25,000/- (Rupees Twenty Five Thousand only). We do not find any infirmity in the assessment of the monthly income of the deceased by the Tribunal.

12. The age of the deceased has been proved through Postmortem certificate viz., Ex.A-26. The Tribunal has rightly added 50% towards loss of future prospects as the deceased was a permanent Teacher in a Government School, which is in accordance with the Constitution Bench Judgment of Hon'ble Supreme Court in the case of National Insurance Company Limited vs. Pranay Sethi and Others reported in 2017 (16) SCC 680. The Tribunal has rightly applied the correct multiplier of '17' while assessing the loss of dependency to the claimants, which is in accordance with the Constitution Bench judgment of the Hon'ble Supreme Court in the case of Sarala Verma & Ors Vs. Delhi Transport Corporation & Anr reported in 2009 (2) TN MAC page No.1. The Tribunal has awarded a total compensation of Rs.59,22,500/- (Rupees Fifty Nine Lakhs Twenty Two Thousand and Five Hundred only) to the claimants in the following manner:

Loss of Income	-	Rs.57,37,500/-
Loss of Love and affection (for respondents 1 and 2)	-	Rs. 1,00,000/-
Loss of Love and affection (for respondents 3 and 4)	-	Rs. 50,000/-
Transportation	-	Rs. 10,000/-
Funeral Expenses	-	Rs. 25,000/-
Total		Rs. 59,22,500/-

13. The compensation awarded by the Tribunal under various heads are in accordance with the settled principles of law and we do not find any infirmity in the same.

14. In the result, there is no merit in this appeal and accordingly the appeal shall stand dismissed. The appellant Insurance Company is directed to deposit the entire award amount as per the award of the Tribunal along with interest and costs after deducting the amount, if any already deposited, to the credit of MCOP.No.24 of 2014 within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the award amount through RTGS within a period of four weeks thereafter. The respondents 3 and 4 are permitted to withdraw their respective shares as apportioned by the Tribunal. Since the respondents 1 and 2 are minors, their respective shares of award amount shall be deposited in an interest bearing fixed deposit in any Nationalized bank till they attain majority. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS V)

/true copy/
Sub Asst. Registrar

vsm
To

1.The Special District Judge,
The Motor Accidents Claims Tribunal,
Dharmapuri.

copy to
The Section Officer,
VR Section, Madras High Court.

+1 cc to Mr.A.Ilaya perumal Advocate sr83950
+1 cc to M/s.M.B.Gopalan Associates sr84664

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aa17/02/2020