IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated : 10.12.2019

Coram

The Hon'ble Mr.Justice M.M.Sundresh
and
The Hon'ble Mr.Justice Krishnan Ramasamy

C.M.A.Nos.2121 and 2122 of 2018
and
C.M.P.Nos.16504 and 16506 of 2018

C.M.A.No.2121 of 2018

United India Insurance Company Ltd.,
Divisional Office-1, 2nd Floor,
104-A, Peramanur Main Road,
Salem - 7 ... Appellant/3rd Respondent

Vs.

1. T.P.Anies
2. M.V.Poulose
3. Thangavel
   (R-3 remained Exparte before the Tribunal)
   ... Respondents/ Petitioners and 1st Respondent

Prayer:-
Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, 1988, against the judgment and decree, dated 27.07.2017 in M.C.O.P. No.714 of 2008, on the file of the Motor Accident Claims Tribunal cum Special District Court, Salem.

C.M.A.No.2122 of 2018

United India Insurance Company Ltd.,
Divisional Office-1, 2nd Floor,
104-A, Peramanur Main Road,
Salem - 7 ... Appellant/2nd Respondent

Vs.

1. Daisy Thomas
2. Minor Austin Thomas
3. Minor Arzal Thomas
4. Chakkunny
5. Thangavel ...Respondents /petitioners

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, 1988, against the judgment and decree, dated 27.07.2017 in M.C.O.P. No.1918 of 2008, on the file of the Motor Accident Claims Tribunal cum Special District Court, Salem.

For Appellant in both the CMAs : Mr.S.Arun Kumar

For Respondents 1 & 2 in CMA.2121/2018 and for R-1to 4 in CMA..2122/2018 : Mr.SP.Yuvraj

For Respondent - 5 in CMA..2122/2018 : No such person

COMMON JUDGMENT

(Judgment of the Court was pronounced by Krishnan Ramasamy, J.)

Questioning the quantum of compensation awarded by the Tribunal and the liability fastened, the United India Insurance Company Limited has filed the present two appeals in C.M.A.Ns.2121 and 2122 of 2018.

2. On 29.12.2007, at about 17.00 hours, when one M.P.John Martin, was travelling in the Maruti Van, bearing Regn.No.TN – 30 – S 2643, on the Mettur to Mecheri Main Road, driven by one T.C.Thomas, in front of Amogam TVS Sales and Service opposite to Malco, a Lorry, bearing Regn.No.KA 01 AA 7650, driven by its driver came from the opposite direction in a rash and negligent manner and dashed against the Maruthi Van, and thus caused the accident. In the said accident, both M.P.John Martin and T.C.Thomas sustained grievous injuries and died. Hence, the parents of the deceased M.P.John Martin filed M.C.O.P.No.714 of 2008 against the insured and the insurer claiming a compensation of Rs.25,00,000/- as compensation. Similarly, the wife, two minor sons and father of the deceased T.C.Thomas filed M.C.O.P.No.1918 of 2008, claiming a sum of Rs.40,00,000/- as compensation.

3. Since both the Appeals arise out of the same accident, they were heard together and disposed of by way of this common judgment.

4. Before the Tribunal, on behalf of the claimants in both Claim Petitions, four witnesses were examined as P.W.1 to

P.W.4 , and twenty four documents were marked as Exs.P.1 to P.24 and Ex.X1 to Ex.X4 were also marked. On the side of the Insurance Company, neither any witness was examined nor any document was marked.

5 On appreciation of evidence, the Tribunal has awarded a sum of Rs.32,43,944/- in M.C.O.P.No.714 of 2008. The break up details of the compensation amount are as follows:-

Sl.No	Head	Award
1	Loss of Future Income	Rs.31,78,944/-
2	Love and Affection	Rs. 40,000/-
3	Funeral Expenses	Rs. 25,000/-
	Total	Rs.32,43,944/-

6 Insofar as the M.C.O.P.No.1918 of 2008, the Tribunal has awarded a sum of Rs.62,28,921/-. The break up details of the same are as follows_

Sl.No	Head	Award
1	Loss of Future Income	Rs.60,43,921/-
2	Funeral Expenses	Rs.25,000/-
3	Consortium to the wife	Rs.50,000/-
4	Love and Affection (minors children)	Rs.1,00,000/-
4	Filial Consortium to the father of the deceased	Rs.10,000/-
	Total	Rs.62,28,921/-

7. We have heard the submissions made on either side and have carefully gone through the entire materials available on record .

I) Liability :-

8. Insofar as the liability involved in these two appeals is concerned, it is the submission of the learned counsel for the appellant/Insurance Company that the accident has occurred not solely due to the rash and negligent driving of the Lorry,bearing Regn.No.KA-01-AA-7650, and there was also negligence on the part of the driver of the Maruthi Van, bearing Regn.No.TN -30 S- 2643 However, the Tribunal, based on the

deposition of P.W.3, and Ex.P.1, FIR, came to the wrong conclusion that the accident had occurred solely due to the rash and negligent driving of the driver of the Lorry and fastened entire liability against the Insurance Company. In support of his contention, the learned counsel relied upon the Rough Sketch drawn by the Police Investigation Officer, and submitted that the driver of the Maruthi Car has crossed the road and hit the lorry and therefore, it is a case of composite negligence, where, both the driver of the Lorry as well as the Maruthi Car were responsible for the accident, and the driver of the Lorry alone cannot be the tort-feasor.

9. On the other hand, the learned counsel for the claimants in both the Appeals has submitted that, the appellant/Insurance Company has not examined any witness or adduced document in order to prove that the accident had occurred due to the driver of the Maruthi Van, and even before the Tribunal, the Insurance Company has not taken the plea of composite negligence and the same is taken only in the Appeal and though in support of such plea, he relied upon Rough Sketch drawn by the Investigation Officer, the same was not marked before the Tribunal, and in the absence of any witness or evidence examined/marked on the side of the Insurance Company, the Tribunal, based on the evidence of P.W.3, which was corroborated in Ex.P.1, FIR, rightly came to the conclusion that the accident had occurred due to the negligence on the part of the driver of the Lorry and the said findings of the Tribunal requires no interference.

10. As rightly pointed out by the learned counsel for the claimants, admittedly, the appellant/Insurance Company has not examined any witness or produced document in order to substantiate their contention that the accident had occurred due to the rash and negligent driving of the driver of the Maruthi Van. Eventhough, the Insurance Company has taken the plea of composite negligence in the Appeal, and to substantiate the same, relied upon rough sketch, in the absence of taking such a plea in the counter statement filed by them, and having failed to mark any document before the Tribunal, we are not in a position to accept such plea.

10.1 Further, we would like to point out, at the time, when the Appeals were taken up for arguments, such plea was not taken by the Insurance Company and only when the orders are about to be dictated, the learned counsel for the Insurance Company made a mention before this Court for listing the matter for being spoken to. Hence, we are not inclined to accept the new plea taken by the Insurance Company and the same has to be brushed aside. Further, it is seen from the impugned award that, one Jimmy Jose, who travelled as one of the passengers in the Maruthi Van was examined as P.W.3, and he deposed that the accident had occurred due to the rash and negligent driving of the driver of the Lorry. Even as per Ex.P1, FIR, it is clearly stated that the accident was due to the negligence on the part of the Lorry driver and the same was corroborated in Ex.P.2 and P.3/MVI Reports and Ex.P.4, Chargesheet. Therefore, the Tribunal by relying upon Ex.P1.to P.4 and the evidence of P.W.3, rightly came to the conclusion that the accident had occurred due to the rash and negligent driving of the Lorry, and fastened the entire liability on the appellant/Insurance Company and in the absence of any proof/document marked on the side of the appellant/Insurance Company to controvert the same, we do not find any infirmity in the findings of the Tribunal with regard to liability aspect and we confirm the same.

II) Quantum in MCOP.No.714 of 2008:-

11. The learned counsel appearing for the appellant/Insurance Company would contend that the Tribunal, while determining compensation towards Loss of Future Income, wrongly fixed the monthly income of the deceased at Rs.22,076/- based on Ex.X.3/Salary Details of the deceased John Martin, which resulted in awarding exorbitant sum of Rs.31,78,944/-. The learned counsel contended that the deceased was only a Manager in Finance Section and the accident occurred in the year 2007, and therefore, there is no possibility for him to earn Rs.22,076/- at that point of time. Further, the amount mentioned in Ex.X3 is not proved through the alleged employer of the deceased or through the Bank Statements of the deceased or by way of Form-16. Apart from Ex.X.3, the claimants have not produced any other document to prove the income of the deceased. Therefore, the learned counsel contended that the monthly income fixed by the Tribunal is high and the same requires modification. The learned counsel further contended that the Tribunal also erred in granting 50% towards future prospects and as per the ratio fixed by the Hon'ble Supreme Court, in the case ofNational Insurance Co. Ltd. Vs. Pranay Sethi and others reported in 2017 (2) TNMAC 609 (SC), only 40% has to be added towards future prospects of the deceased for the age group of 31. Like the same, the compensation awarded under various heads are also on the higher side and learned counsel, therefore, sought for a suitable reduction in the compensation amount awarded by the Tribunal.

12. Per contra, it is the submission of the learned counsel for the claimants in C.M.A.No.2121 of 2018 that the Tribunal based on Ex.X.3/Salary Details and the evidence of P.W.2, MV Poulose, father of the deceased, rightly fixed the

income of the deceased at Rs.22,076/- and awarded compensation accordingly towards loss of future income and if the appellant/Insurance Company has dispute over the same, they ought to have examined any witness or produced document. Further, he would contend that even during the examination on the side of the claimants, the appellant/Insurance Company did not cull out anything from the oral evidence or rebutted the documents marked on the side of the claimants. Therefore, the learned counsel contended that the compensation awarded by the Tribunal towards loss of future income based on Ex.X.3/Salary details, is just and fair, and needs no re-consideration. Similarly, the compensation awarded by the Tribunal under the other heads are just and fair and requires no interference.

13. The claimants, in order to prove the age, qualification and income of the deceased, marked Exs.X.1 to X.3 and Ex.P.18. However, on the side of the appellant/Insurance Company, no one was examined and also no document was marked to dispute the age, income of the deceased and in the absence of any document to controvert the income of the deceased, the Tribunal has rightly relied upon the Ex.X.3 and fixed the salary of the deceased as Rs.22,076/- per month. Therefore, we do not find any infirmity in the fixation of the salary of the deceased by the Tribunal. However, so far as 50% fixed by the Tribunal towards future prospects is concerned, we feel the same to be on the higher side and by following the ratio fixed by the Hon'ble Supreme Court, in the case of National Insurance Co. Ltd. Vs. Pranay Sethi and others reported in 2017 (2) TNMAC 609 (SC), we refix the future prospects fixed by the Tribunal at 40% instead of 50%. So far as the adoption of multiplier by the Tribunal and deduction made towards personal expenses of the deceased are concerned, since the deceased was a Bachelor and was aged 31 at the time of the accident, the Tribunal has rightly adopted multiplier of '16' and deducted 50% towards his personal expenses and we confirm the same. Thus, we determine the compensation towards Loss of Future Income in the following manner :-

Rs.22,076/-+ 40% (Rs.8,830) = Rs.30,906/-
Rs.30,906 - 50% = Rs.15,453/- x 12 x 16 = Rs.29,66,976/-.

14. Therefore, the compensation awarded by the Tribunal towards Loss of future income at Rs.31,78,944/- is modified and reduced to a sum of Rs.29,66,976/-. Similarly, since the sum of Rs.25,000/- awarded by the Tribunal towards Funeral Expenses is excessive, the same is reduced to Rs.15,000/- by following the ratio fixed by the Hon'ble Supreme Court, in Pranay Sethi's case (supra). Insofar as the sum of Rs.40,000/- awarded by the

Tribunal towards love and affection is concerned, the same appears to be just and fair and the same stands confirmed. However, it is seen that the Tribunal has not awarded any amount towards Loss of Estate. Hence, by following the ratio laid down by the Hon'ble Supreme Court, in Pranay Sethi's case (supra),a sum of Rs.15,000/- is hereby awarded for loss of estate. Accordingly, the total compensation amount of Rs.32,43,944/- awarded by the Tribunal is modified and reduced to Rs.30,36,976/-. The break up details of the same are as follows_

Sl.No	Head	Award of the Tribunal	High Court Awward	Modified/Awarded/Confirmed
1	Loss of Future Income	Rs.31,78,944 /-	Rs.29,66,976 /-.	Modified
2	Love and Affection	Rs. 40,000/-	Rs. 40,000/-	Confirmed
3	Funeral Expenses	Rs. 25,000/-	Rs. 15,000/-	Modified
4	Loss of Estate	Nil	Rs. 15,000/-	Awarded
	Total	Rs.32,43,944 /-	Rs.30,36,976 /-	

III) Quantum in MCOP.No.1918 of 2008:-

15. The learned counsel appearing for the appellant/Insurance Company would contend that the Tribunal, while determining compensation towards Loss of Future Income, erred in fixing a sum of Rs.47,000/- per month as monthly income of the deceased. The learned counsel contended that in order to prove the income of the deceased, the claimants have not produced any salary particulars of the deceased, whereas, they marked only ITRs filed by the deceased for the AY 2004-05 to 2007-08 as Exs.P.10 to P.13. Though the claimants marked Ex.P.24 the salary certificate where, the monthly income drawn by the deceased for the month August, 2007, is mentioned as Rs.47,000/-, the same is not proved through the alleged employer of the deceased or through the Bank Statements of the deceased or by way of Form-16. But the Tribunal relying upon the same, fixed the monthly income of the deceased at Rs.47,000/- made deduction towards Income Tax at 10%, which has resulted in awarding exorbitant sum of Rs.60,43,921/- towards loss of pecuniary income.

15. 1 The learned counsel contended that the deceased passed away in the year 2007, and the claimants filed ITR for

the AY 2007-08 on behalf of the deceased for the financial year ended on 31.03.2007, and the Tribunal, without verifying into genuineness of the same, taken the annual income of the deceased at Rs.2,50,000/- and after making deduction towards tax at 10%, arrived at a sum of Rs.4,64,917/- as annual income of the deceased, which is incorrect. However, the learned counsel submitted a sum of Rs.27,000/- may be fixed as monthly income of the deceased, even as per the Ex.P.13, issued by the competent authority for AY 2008-09, the said amount is shown as income of the deceased. It is his further submission that even the compensation awarded by the Tribunal under other heads are high and excessive and requires appropriate reduction.

16. On the other hand, the learned counsel for the claimants in C.M.A.No.2122 of 2018 submitted that the Tribunal has rightly fixed the monthly income of the deceased at Rs.47,000/- based on Ex.P.24 and make deduction towards tax based on Ex.P.10 to P.13, ITR documents filed by the claimants, and accordingly determined the compensation towards of Loss of future income and the same requires no interference. Further, the learned counsel submitted that even the compensation awarded by the Tribunal under other heads are also fair and proper and requires no interference.

17. The claimants, in order to prove the income of the deceased, marked Exs.P.10 to P.13, viz., the ITRs filed for AY 2004-05 to 2007-08 respectively. However, this Court, on perusal of the same, found that, upto 31.03.2007, the income of the deceased was Rs.2,750/- per month and all of a sudden, it got increased to Rs47,000/-per month for the AY year 2007-08. That apart, except, ITR documents, no other document was marked to prove the income of the deceased and the documents marked by the claimants in support of their claim towards loss of income of the deceased viz.,Ex.P.22, P.23, and P.24, cannot be relied upon, for the reason that the Authorities, who issued the same were not examined, and in the absence of any oral evidence to prove the genuineness of Exs.P.22, P.23, and P.24, we are not in a position to accept the same. Therefore, as fairly submitted by the learned counsel for the appellant/Insurance Company, we are inclined to fix a sum of Rs.27,000/- as monthly income of the deceased. In the present case, there are four dependents, therefore,the Tribunal ought to have taken 1/4th deduction instead of 1/3rd and for the age group of 47, and25% requires to be added towards future prospects as per the ratio fixed by the Hon'ble Supreme Court in Pranay Sethi's case, (supra) instead of 30% added by the Tribunal, and the multiplier to be adopted for the age group of 47 is '13', and the Tribunal has rightly adopted the multiplier. Thus, the loss of future income of the

deceased is determined in the following manner :-

Rs.27,000/- + 25% (Rs.6,750/-) = Rs. 33 ,750/-
Rs.33,750 - 1/4th = Rs.25,312/-
Rs.25,312 x 12 x 13 = Rs.39,48,672/-

18. Therefore, the compensation awarded by the Tribunal towards Loss of future income at Rs.60,43,921/- is modified and reduced to a sum of Rs.39,48,672/-. Similarly, since the sum of Rs.25,000/- awarded by the Tribunal towards Funeral Expenses is excessive, the same is reduced to Rs.15,000/- by following the ratio fixed by the Hon'ble Supreme Court, in Pranay Sethi's case (supra). Insofar as the compensation awarded by the Tribunal under other heads are concerned, the Hon'ble Supreme Court standardized the amount to be awarded towards loss of consortium as Rs.40,000/- to the wife. For loss of love and affection as Rs.40,000/- to the children in the form of parental consortium and Rs.40,000/- to each of the parents towards Filial consortium for loss of the son. In the present case, in so far as the compensation to be awarded to the father of the deceased is concerned, viz., the fourth respondent, in the light of the law laid down by the Hon'ble Supreme Court, in the case of Magma General Insurance Company Vs. Nanu Ram alias CHUHRU RAM and others (supra), we are inclined to award a sum of Rs.40,000/- under the separate head, Filial Consortium to the father of the deceased and a sum of Rs.40,000/-each as parental consortium to the second and third respondents. Following the principle laid down by the Hon'ble Apex Court in Pranay Sethi case (supra), we inclined to award a sum of Rs.40,000/- towards "loss of consortium" to the wife of the deceased, instead of a sum of Rs.50,000/- as awarded by the Tribunal. Therefore, this Court is inclined to award a sum of Rs.1,20,000/- towards love and affection in the form of Filial and Parental consortium, instead of Rs.1,10,000/- awarded by the Tribunal. However, it is seen that the Tribunal has not awarded any amount towards Loss of Estate. Hence, by following the ratio laid down by the Hon'ble Supreme Court, in Pranay Sethi's case (supra),a sum of Rs.15,000/- is hereby awarded for loss of estate. Accordingly, the total compensation amount of Rs.62,28,921/- awarded by the Tribunal is modified and reduced to a sum of Rs.41,38,672-/-.

Sl.No	Head	Tribunal Award	High Court Award	Modiified /confirmed/awarded
1	Loss of Future Income	Rs.60,43,921/-	Rs.39,48,672/-	Modified
2	Funeral Expenses	Rs.25,000/-	Rs.15,000/-	Modified
3	Consortium to the wife	Rs.50,000/-	Rs.40,000/-	Modified
4	Love and Affection (minors children)	Rs.1,00,000/-	Rs.80,000/-	Modified
5	Filial Consortium to the father of the deceased	Rs.10,000/-	Rs.40,000/-	Modified
6	Loss of Estate	Nil	Rs.15,000/-	Awarded
	Total	Rs.62,28,921/-	Rs.41,38,672-	

19. Accordingly, this Court reduces the compensation awarded by the Tribunal from Rs.62,28,921/- to Rs.41,38,672/- rounded off into Rs.41,39,000/-.

20. The Insurance Company, who is the appellant in both Appeals is directed to deposit the entire amount as determined by this Court in both the Appeals with interest at the rate of 7.5% from the date of claim petition till the date of deposit, after deducting the amount already deposited if any, within a period of eight weeks from the date of receipt of a copy of this judgment. This Court also directs the Tribunal to transfer the entire award amount to the claimants in both Appeals by way of RTGS to their respective bank accounts directly within a period of three weeks from the date of deposit of the award amount along with interest. In the event, already the amount is deposited, if any, the Tribunal is directed to transfer the entire amount in the manner stated below to the claimants within a period of three weeks from the date of receipt of copy of this order.

21. So far as the respondents 1 and 2/claimants in C.M.A.No.2121 of 2018 is concerned, the claimants are entitled to a sum of Rs.15,18,488/- each.

21.1. Insofar as the respondents 1 and 4/claimants in C.M.A.No.2122 of 2018 is concerned,

- the first claimant is entitled to a sum of Rs.25,00,000/-

* the second claimant is entitled to a sum of Rs.6,00,000/-
* the third claimant is entitled to a sum of Rs.6,00,000/-
* the Fourth claimant is entitled to a sum of Rs.4,39,000/-

21.2 So far the share in respect of the minor claimants in C.M.A.No.2122 of 2018 is concerned, the same shall be deposited by the Tribunal in any of the Nationalized Bank, in an interest bearing FD Account till the minor attains majority and the mother of the minor claimant is permitted to withdraw accrued interest once in three months.

22. In the result, both the Appeals are partly allowed. No costs. Consequently, connected miscellaneous petition are closed. Needless to point out that the claimants in both the Appeals shall pay the necessary Court fee, if any, for the enhanced compensation amount, before receiving the copy of this judgment.

Sd/-
Asst.Registrar (CS I)

/true copy/

Sub Asst. Registrar

sd
To

1.The Special District Court, Salem.
(Motor Accident Claims Tribunal),
Salem.

Copy to
The Section Officer
VR Section
High Court Madras

+1 cc to M/s.SP.Yuvaraj Advocate sr101864
+1 cc to M/s.S.Arunkumar Advocate sr101744

C.M.A.Nos.2121 and 2122 of 2018

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