IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2019

CORAM :

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

C.M.A.No.2802 of 2019
and
C.M.P.No.14369 of 2019

The New India Assurance Company Limited,
Motor III party claims office,
No.45, Moore street,
Chennai 01. ... Appellant/Respondent II

Vs

1.Mrs.M.Bhagyam R1/P-1
2.Mr.V.Murali R2/P2
3.R.Nandagopal R3/R1
...Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree passed in M.C.O.P.No.2960 of 2016 dated 27.11.2018 on the file of the Learned Motor Accident Claims Tribunal II Court of Small Causes, Chennai.

For Appellant : Mr.J.Chandran

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 fixing of negligence on part of the rider of the two wheeler, the offending vehicle and awarding a sum of Rs.51,00,000/- as compensation for the death of one Mr.Dinesh Murali, 27 years old, working as Supervisor in Renault Nissan Car Company, allegedly earning about Rs.42,500/- per month, in the accident occurred on 01.03.2016, when he tried to cross Annasalai from West to East near the Junction CIT Nagar First Main Road, Nandanam and was hit down by a two wheeler insured with the appellant/insurance company driven rash and negligently.

2.Heard Mr.J.Chandran, learned Counsel for the appellant who would strenuously argue that it is the fault of the pedestrian which caused the accident. When the pedestrian and his friend suddenly tried to cross Annasalai, the two wheeler which was driven by its rider properly, hit them causing the accident. In a hurry to catch the bus which was stopped in the opposite side, the deceased and his friend suddenly crossed the road without seeing the oncoming two wheeler and therefore, the accident occurred. Since, the pedestrian suddenly crossed the road, the accident occurred and the deceased alone was responsible for the accident and he was negligent in crossing the road and there was no fault on the part of the rider of the two wheeler who also died in the accident. Mr.Chandran, learned Counsel for the appellant would also submit that the amounts fixed by the tribunal towards monthly income and other heads are on the higher side and therefore, he seeks to set aside the entire award.

3.The records would reveal that the accident occurred on 01.03.2016. The manner of the accident was categorically stated by PW2, eye witness who also crossed the road along with the deceased. PW2 has given the FIR and in the FIR, it has been categorically stated that the two wheeler was driven rash and negligently and hit against the deceased, Mr.Dinesh Murali.

4.When PW2, eye witness categorically stated about the manner of the accident, accusing the two wheeler for the negligent driving, in the absence of any rebuttable evidence by the appellant, the tribunal was right in fixing the negligence on the part of the driver of the two wheeler which was insured with the appellant. Therefore, the finding reached by the tribunal that the two wheeler rider alone was negligent and was responsible for the accident cannot be interfered with.

5.Though Mr.J.Chandran, learned Counsel for the appellant would submit that Rs.35,500/- determined as monthly income is on the higher side, the claimants filed Ex.P.19, pay slip series of the deceased which would show that the deceased was earning a sum of Rs.38,348/-, Rs.41,317/- and Rs.44,888/- in the months of December 2015, January 2016 and February 2016 respectively which include overtime allowance. The evidence of PW3, legal manager of Renault Nissan Automotive India Private Limited, Kanchipuram District as proved by Ex.P.17 authorization letter and Ex.P.18, the appointment order of the deceased, would disclose that the deceased was working and even earning so much. Though Ex.P.19, pay slip series would prove that the deceased was earning about Rs.38,348/-, Rs.41,317/- and Rs.44,888/-, the tribunal only took Rs.35,455/- as monthly income rounded off to Rs.35,500/-. The fixing of monthly income of Rs.35,500/- is as per Ex.P.19 series and the same cannot be interfered with.

6.Further, the tribunal has rightly added 40% towards future prospects as per the Judgment in "Pranay Sethi's case" as the deceased was aged about 27 years as proved by Ex.P.6

viz., provisional certificate of the deceased and the same is confirmed. The appropriate multiplier '17' was rightly applied as per the Judgment in "Sarala Verma's case" and the same is confirmed and thus, the loss of income would be Rs.35,500 + 40% = Rs.49,700/-. If 50% is deducted towards personal expenses, the loss of income would be Rs.49,700 - 50% = Rs.24,850/- x 12 x 17 = Rs.50,69,400/-.

7.Further, Rs.15,000/- each awarded by the tribunal towards Funeral expenses and loss of estate are all confirmed. No amount was awarded towards transportation and therefore, a sum of Rs.10,000/- is awarded. Hence, the total compensation payable is determined as follows: Rs.50,69,400/- + 15,000/- + 15,000/- + 10,000/- = Rs.51,09,400/- rounded off to Rs.51,10,000/-. The interest awarded by the Tribunal at the rate of 7.5% per annum is confirmed.

8.Even though the appeal has been preferred by the Insurance company seeking to set aside the award, re appreciating the facts and circumstances of the case, this Court suo motu, enhances the compensation from Rs.51,00,000/- to Rs.51,10,000/- under Order XLI Rule 33 and under Section 151 of Civil Procedure Code and under Article 227 of the Constitution of India in an endeavor to do complete justice and for which this Court has got powers and jurisdiction as held by the Honourable Supreme court in "Nagappa V. Gurdayal Singh reported in 2004 (2) TN MAC 398 (SC)".

9.The respondents 1 and 2 are each entitled to 50% of the award amount. The appellant/Insurance company is directed to deposit the entire award amount before the trial Court along with interest and costs after deducting the amount, if any, already deposited within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the tribunal is directed to transfer the respective shares of the claimants through RTGS within a period of one week.

10. Accordingly, the appeal fails and the same is dismissed by enhancing the award of the tribunal from Rs.51,00,000/- to Rs.51,10,000/-. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accidents Claims Tribunal,
II Court of Small Causes,
Chennai.

2. The Section Officer,
V.R. Section, High Court,
Madras.

+1cc to Mr.J.Chandran, Advocate, S.R.No.59595

C.M.A.No.2802 of 2019
and
C.M.P.No.14369 of 2019

RV(CO)
GN(23/01/2020)