IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.09.2019

CORAM:

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

C.M.A.NO.2414 OF 2017
AND
C.M.P.NO.13058 OF 2017
AND
CROS.OBJ.NO.43 OF 2018

C.M.A.No.2414 of 2017

The New India Assurance Co. Ltd.,
45, Moore Street, Chennai -1. ... Appellant

vs.

1.K.Pushpalatha

2.K.Pavithra

3.K.Mahesh ... Respondents 1 to 3

4.A.Nasreen ... Respondent 4

Prayer:
Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree made in M.A.C.T.O.P.No.274 of 2015 on the file of the Motor Accidents Claims Tribunal, (III Additional District Judge) at Poonamallee.

For Appellant : Mr.M.Krishnamoorthy

For Respondent : Mr.F.Terry Chellaraja R1 to R3

Cros.Obj.No.43 of 2018

1.K.Pushpalatha
2.K.Pavithra
3.K.Mahesh ...Cross Appellants

vs

1. The New India Assurance Co. Ltd.,
No.45, Moore Street,
Chennai -600 001. ... 1st Respondent

2.A.Nasreen ... 2nd Respondent

Prayer:

Cross Objection filed under Order 41 Rule 22 of the Code of Civil Procedure, against the award dated 06.02.2017 and made in MCOP.No.274/2015 on the file of Motor Accidents Claims Tribunal, Additional District Judge-III, Thiruvallur at Poonamallee.

For Cross Objectors : Mr.F.Terry Chellaraja

For Respondents : Mr.M.Krishnamoorthy for R1
R2 Exparte

COMMON JUDGMENT

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

Civil Miscellaneous Appeal No.2414 of 2017 has been filed by the Insurance Company and Cross Objection No.43 of 2018 has been filed by the claimants. The Appellant as well as the cross objector have challenged the award dated 06.02.2017 passed by the Motor Accidents Claims Tribunal, Additional District Judge-III, Thiruvallur at Poonamallee in MACTOP.No.274 of 2014. The insurance company has challenged the quantum of compensation assessed by the Tribunal and the claimants have sought for enhancement.

Brief facts leading to the filing of Civil Miscellaneous Appeal and the Cross Objection.

2. A person by name B.Kumanan died on 30.04.2015 as a result of an accident caused by an Innova Car bearing Registration No.TN-01-AT-9573 owned by one Nasreen who is the fourth respondent in CMA.No.2414 of 2017 and second respondent in Cross Objection No.43 of 2018 and the said vehicle is insured with the Appellant insurance company.

3. The accident happened when B.Kumanan was riding a TVS Vega motor cycle bearing Registration No.TN-18-W-4651 from South to North at 200 feet road, Padi, near Wheels India Company Main gate when the Innova Car bearing Registration No.TN-01-AT-9573 coming in the same direction hit the motor cycle and as a result of the impact, B.Kumanan fell down on the road and sustained severe head injuries which resulted in his death.

4. The claimants are the dependents of the deceased and they are his wife, daughter and son. They preferred a claim before the Motor Accidents Claims Tribunal against the owner of the Innova car as well as the Appellant Insurance Company who is its insurer, seeking a compensation Rs.77,00,000/- which was restricted to Rs.60,00,000/- for the death of B.Kumanan as a result of the accident.

5. The Motor Accident Claims Tribunal by its award dated 06.02.2017 passed in M.A.C.T.O.P.No.274 of 2015, directed the Appellant to pay the claimants a sum of Rs.30,54,892/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realization. Out of the said compensation amount, the Tribunal determined the compensation payable to the first claimant at Rs.10,54,892/- and to the second and third claimants determined the same at Rs.10,00,000/- each.

6. Aggrieved by the award dated 06.02.2017, passed in M.A.C.T.O.P.No.274 of 2015, this appeal has been by the Insurance Company. Cross Objection No.43 of 2018 has also been filed by the claimants seeking enhancement of compensation under the impugned award dated 06.02.2017 in M.A.C.T.O.P.No.274 of 2015. Since both the matters arise out of the same accident, we are disposing of the same by a common judgment.

7. Heard Mr.M.Krishnamoorthy, learned counsel for the Appellant and Mr.F.Terry Chellaraja, learned counsel for the respondents 1 to 3 in C.M.A.No.2414 of 2017 as well as Cross Objectors in Cros.Obj.No.43 of 2018.

Discussion:

8. The Appellant Insurance Company has filed the appeal challenging only the quantum of compensation awarded by the Tribunal and they have not challenged the adverse finding of negligence on the part of the insured vehicle. According to them, the deceased had only four more years of service from the date of the accident and therefore, the Tribunal ought not to have applied the fixed multiplier based on the age of the deceased at the time of the accident. According to the Appellant Insurance Company, the deceased will not be earning the same income after his retirement and hence, the Tribunal ought to have considered the same and assessed the loss of dependency.

9. On the other hand, the claimants in their cross objection have contended that the compensation awarded by the Tribunal is inadequate. According to them, the monthly income fixed by the Tribunal at Rs.31,021/- is low as the gross monthly income of the deceased at the time of the accident was Rs.43,000/-. The award is also challenged by them on the ground

that the Tribunal has not awarded any compensation towards loss of Future Prospects. It is also their case that the compensation awarded under various heads by the Tribunal is inadequate.

10. This Court has perused and examined the impugned award and has also considered the materials and evidence available on record.

11. It is an undisputed fact, as seen from the oral and documentary evidence that the deceased would have retired from service in four years time from the date of the accident. He was an employee in a private concern namely Wheels India Limited. Being a private concern, after retirement, there is no possibility of getting pension or getting the same salary. This being the case, the Tribunal ought not to have applied 11 multiplier on the monthly income of the deceased which he was drawing at the time of the accident.

12. The monthly income of the deceased after deductions at the time of the accident was Rs.31,021/-. The deceased was aged 51 years at the time of the accident and therefore, following the Judgment of the Hon'ble Supreme Court in the case of Sarla Verma and Others vs. Delhi Transport Corporation and another reported in 2009 (2) TNMAC 1 (SC), 15% will have to be added to his monthly income towards loss of future prospects and the total monthly income of the deceased after adding the loss of future prospects is Rs.35,674 (31,021 + 4,653). The dependents are three in number. As per Sarla Verma Judgment, 1/3rd will have to be deducted towards personal and living expenses of the deceased from and out of the total monthly income and therefore, the monthly contribution of the deceased to his dependents works out to Rs.23,783/- (35,674 - 11,891). For the period of 48 months when the deceased would have been in employment with Wheels India Limited, the Tribunal ought to have calculated the loss of dependency only on the sum of Rs.23,783/- which is his monthly contribution to the claimants and not on Rs.31,021/- which is the monthly income of the deceased after deduction at the time of the accident. The deceased would have retired on 14.05.2019 i.e. 48 months from the date of the accident. Therefore, we assess his monthly contribution to the claimants upto 14.05.2019 for a period of 48 months at Rs.23,783/-.

13. Since the deceased will not be earning the same salary after his retirement and may earn only half of his existing salary and also may contribute only half of his existing contribution to the claimants through any other employment if he

is able to get one, we are of the considered view that the monthly contribution of the deceased after his retirement will be 50% of Rs.23,783/- i.e., Rs.11,891.50/-. On an average, a person will be earning upto the age of 62 years. Considering the same, the loss of dependency is calculated for the deceased upto the age of the 62 years i.e., 84 months.

14. The Tribunal has awarded Rs.1,00,000/- to the wife of the deceased towards pain and suffering, loss of love and affection and loss of consortium. The Tribunal has also awarded Rs.1,00,000/- each to the daughter and son of the deceased towards pain and suffering, loss of love and affection. The compensation awarded by the Tribunal towards pain and suffering, loss of love and affection and loss of consortium is excessive and not in accordance with the Constitution Bench Judgment of the Hon'ble Supreme Court in the case of National Insurance Company Limited vs. Pranay Sethi and Others reported in 2017 (2) TN MAC 609 (SC). Accordingly, we assess the loss of consortium to the wife of the deceased at Rs.40,000/- and loss of love and affection to the daughter and son of the deceased at Rs.40,000/- each.

15. The Tribunal has also not awarded any compensation towards loss of estate. As per Pranay Sethi Judgment referred to supra, a sum of Rs.15,000/- will have to be awarded towards loss of estate.

16. The Tribunal has awarded a sum of Rs.25,000/- towards funeral expenses which is excessive and not in accordance with Pranay Sethi Judgment. We accordingly, fix the same at Rs.15,000/-.

17. It is settled law that Group Insurance Accident Policy issued by the employer cannot be deducted from and out of the compensation amount payable to an accident victim. Therefore, the Tribunal has rightly rejected the contention of the Appellant insurance company that the sum of Rs.10,00,000/- assured to the claimants under the Group Insurance Accident Policy issued by the employer of the deceased cannot be deducted from and out of the total compensation payable to the claimants.

18. For the foregoing reasons, the impugned award of the Tribunal is modified and the compensation is reduced from Rs.30,54,892 to 22,90,470/- as detailed below:

Heads	Amount awarded by the Tribunal (Rs.)	Amount modified by this Court (Rs.)
Total loss of pecuniary benefits	Rs.27,29,892/- (31,021-1/3 = 20,681 x12x11= Rs.27,29,892)	Rs.11,41,584/- (23,783 x 48) Rs.9,98,886/- (11,891.50 x 84)
Loss of consortium to the wife	Rs.1,00,000/-	Rs.40,000/-
Loss of love and affection to married daughter and major son	Rs.2,00,000/-	Rs.80,000/-
Funeral expenses	Rs.25,000/-	Rs.15,000/-
Loss of estate	-	Rs.15,000/-
Total	Rs.30,54,892/-	Rs.22,90,470

19. In view of the modified assessment, we apportion the compensation amount of Rs.22,90,470/- in the following manner:

Wife : Rs.7,90,470/-

Children : Rs.7,50,000/- each

Conclusion:

20. In the result, the Civil Miscellaneous Appeal filed by the Appellant insurance company is partly allowed and the Cross Objection filed by the claimants is dismissed. However, the rate of interest fixed by the Tribunal at 7.5% is confirmed. The Appellant-Insurance Company is directed to deposit the entire award amount of Rs.22,90,470/- as per the order of this Court before the Tribunal along with interest and costs after deducting the amount, if any already deposited, to the credit of MCOP.No.274 of 2015 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 respective share

of the award amount to the respective claimants through RTGS within a period of four weeks thereafter. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

nl

To

1. The Motor Accidents Claims Tribunal,
   (III Additional District Judge) at Poonamallee.

2. The Section Officer,
   VR Section, Madras High Court.

+1cc to M/S.Malar, Advocate, S.R.No.78832
+1cc to Mr.M.Krishnamoorthy, Advocate, S.R.No.78601

C.M.A.No.2414 of 2017
and
Cros.Obj.No.43 of 2018

RR(CO)
CS/02/06/2020