IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 21.10.2019
CORAM
THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE
C.M.A.No.3337 of 2017

United India Insurance Co. Ltd.,
E.C.R.Road, Prdupattinam,
Kalpakkam - 603 102.
Kancheepuram District,
D.O.No.134, Greams Road,
Chennai - 6 ... Appellant/2nd Respondent

vs.

1.Thulasi
2.Minor. Arunkumar
3.Minor. Mahalakshmi
4.Minor. Loganathan
(Minors 2 to 4 rep. by their mother Thulasi)
5.Kasturi
6.Ramalingam ...Respondents1 to6/Petitioners
7.V.Marimuthu ...7th Respondent/1st respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 20.07.2017 made in MCOP.No.2583 of 2012 on the file of the Motor Accident Claims Tribunal, III Court of Small Causes, Chennai.

For Appellant : Mr.S.Arun Kumar

For Respondents 1 to 6 : Mr.F.Terry Chellaraja

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

This appeal has been filed by the Insurance company challenging the Award dated 20.07.2017 passed by the Motor Accident Claims Tribunal, III Court of Small Causes, Chennai in MCOP.No.2583 of 2012.

Brief facts leading to the filing of this appeal:

2. A person by name R.Harikrishnan died on 05.05.2012 as a result of an accident caused by a Hero Honda Splender two wheeler bearing registration No.TN21-K-9270 owned by the seventh respondent and insured with the Appellant. The accident happened when the deceased was travelling as a pillion rider in the Hero Honda Splender Vehicle bearing registration No.TN21-K-9270 and the said vehicle dashed against a tree at Pawanjur to Koovathur road, Nelvalpalayam and as a result of the same, R.Harikrishnan died.

3. The dependents of the deceased who are his wife, three children and his parents are the respondents 1 to 6 in this Appeal. They preferred a claim before the Motor Accident Claims Tribunal, III Court of Small Causes, Chennai in MCOP.No.2583 of 2012 against the seventh respondent and the Appellant insurance company seeking a compensation of Rs.25,00,000/- for the death of R.Harikrishnan as a result of the accident.

4. The Motor Accident Claims Tribunal by its Award dated 20.07.2017, directed the Appellant insurance company to pay the claimants a compensation of Rs.24,90,000/- together with interest at the rate of 7.5% per annum from the date of numbering of claim petition i.e., from 22.06.2012 till the date of deposit. Out of the total compensation amount of Rs.24,90,000/- the Tribunal determined the amount payable to the first respondent at Rs.7,00,000/-, to the second to fourth respondents at Rs.5,00,000/- each and to the fifth and sixth respondents at Rs.1,45,000/- each.

5. Aggrieved by the Award dated 20.07.2017 passed in MCOP.No.2583 of 2012, this Appeal has been filed by the Insurance Company.

6. Heard Mr.S.Arun kumar, learned counsel appearing for the Appellant and Mr.F.Terry Chellaraja, learned counsel appearing for the respondents 1 to 6. The seventh respondent has remained exparte before the Tribunal and hence, notice to the seventh respondent is dispensed with in this Appeal.

Discussion:

7. The Appellant insurance company has challenged the impugned award on the ground that the Tribunal has erroneously fixed the monthly income of the deceased at Rs.12,000/- relying upon the interested testimony of PW1. It is also their case that the Tribunal ought not to have added 50% towards loss of future prospects to the claimants. It is also their case that the compensation awarded by the Tribunal under various other heads is excessive.

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

9. Before the Tribual, the claimants have filed five documents which were marked as Ex.P1 to Ex.P5 and three witnesses were examined on their side viz., (a) PW1- Thulasi, wife of the deceased, (b) PW2-Vasudevan, maistry and employer of the deceased and (c) PW3 – Varadhan, an eyewitness to the accident. On the side of the Appellant insurance company, neither any witness was examined nor any document filed, before the Tribunal.

10. The deceased was a mason and his avocation has not been disputed by the Appellant insurance company. According to the claimants, the deceased as a mason, was earning a monthly income of Rs.15,000/- at the time of the accident. PW2-Vasudevan, the employer of the deceased has also deposed that the deceased was working under him as a mason for the past three years and was earning a sum of Rs.700/- per day. But the claimants have not filed any documentary evidence to prove the same. Since no documentary evidence was produced to prove the income of the deceased, the Tribunal has rightly assessed the notional monthly income of the deceased at Rs.10,000/-, considering the year of the accident i.e., 2012. Accordingly, we confirm the same.

11. The Tribunal has added 50% towards loss of future prospects which is high as it is 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 (16) SCC 680. Since the deceased was a mason and he is not in permanent employment, the Tribunal ought to have added only 40% towards loss of future prospects instead of 50%. Accordingly, the loss of future prospects is reduced to 40% from 50%.

12. The Tribunal has rightly deducted $1/4^{th}$ towards personal expenses of the deceased as the dependents of the deceased are six in number and has also rightly applied 15 multiplier, considering the age of the deceased i.e., 38 years as evidenced from the postmortem certificate Ex.P2. We do not find any infirmity in the same and comfirm the same.

13. The Tribunal has erroneously awarded a sum of Rs.1,00,000/- to the first claimant/first respondent towards loss of consortium. As per Pranay Sethi Judgment referred to supra, the first respondent is entitled only to Rs.40,000/- towards loss of consortium. Accordingly, we reduce the same to Rs.40,000/- from Rs.1,00,000/-.

14. The Tribunal has also erroneously awarded an excess amount of (a) Rs.3,00,000/- towards loss of love and affection to the claimants 2 to 4 who are the children of the deceased and (b) Rs.50,000/- towards loss of love and affection to the claimants 5 and 6 who are the parents of the deceased. We are of the considered view that a total compensation of Rs.1,00,000/- for the claimants 2 to 6 towards loss of love and affection is an adequate compensation.

15. The Tribunal has awarded only a sum of Rs.10,000/- towards loss of funeral expenses which is not in accordance with Pranay Sethi Judgment referred to supra, wherein the Hon'ble Supreme Court has fixed the same at Rs.15,000/-. Accordingly, we assess the same at Rs.15,000/-.

16. The Tribunal has rightly awarded a sum of Rs.5,000/- towards transportation expenses and the same is comfirmed.

17. The Tribunal has not awarded any compensation towards loss of estate which the claimants are entitled to as per Pranay Sethi Judgment referred to supra. Accordingly, we award a sum of Rs.15,000/- towards loss of estate to the claimants.

18. For the foregoing reasons, the impugned award is modified in the following manner:

<table>
<tr><th>Heads</th><th>Amount awarded by the Tribunal
(Rs.)</th><th>Modified Award Amount
(Rs.)</th></tr>
<tr><td>Pecuniary loss</td><td>20,25,000/-
(10000 x 12 = 120000 + 50 % = 180000 -1/4 = 135000 x 15)</td><td>18,90,000/-
(10000 x 12 = 120000 + 40% = 168000-1/4 = 126000 x 15)</td></tr>
<tr><td>Loss of consortium</td><td>1,00,000/-</td><td>40,000/-</td></tr>
<tr><td>Loss of love and affection to the minor claimants 2 to 4</td><td>3,00,000/-</td><td rowspan="2">1,00,000/-</td></tr>
<tr><td>Loss of love and affection to the claimants 5 & 6</td><td>50,000/-</td></tr>
<tr><td>Funeral Expenses</td><td>10,000/-</td><td>15,000/-</td></tr>
<tr><td>Loss of estate</td><td>--</td><td>15,000/-</td></tr>
<tr><td>Transport Expenses</td><td>5,000/-</td><td>5,000/-</td></tr>
<tr><td>Total</td><td>24,90,000/-</td><td>20,65,000/-</td></tr>
</table>

Conclusion:

19. In the result, the Appeal is partly allowed by modifying the award amount from Rs.24,90,000/- to Rs.20,65,000/-. However, the rate of interest fixed by the Tribunal is confirmed. The Appellant insurance company is directed to deposit the entire award amount of Rs.20,65,000/- together with interest at the rate of 7.5% per annum from the date of numbering of claim petition till the date of realisation and costs after deducting the amount, if any already deposited, to the credit of MCOP.No.2583 of 2012 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 award amount to the first, fifth and sixth respondents through RTGS within a period of four weeks thereafter. Since the second, third and fourth respondents are

minors, their share of award amount shall be deposited in an interest bearing fixed deposit in any Nationalized bank till they attain majority. However, the accrued interest under the fixed deposit shall be permitted to be withdrawn by the first respondent once in 6 months. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

nl
To

1.The Motor Accident Claims Tribunal,
III Court of Small Causes, Chennai.
2.The Section Officer,
VR Section, High Court,
Chennai.

+1 cc to M/s.S.Arunkumar Advocate sr8832
+1 cc to M/s.R.Terry Chella Raja Advocate sr87979

C.M.A.No.3337 of 2017

kj(co)
aa09/06/2020