IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH
AND
THE HONOURABLE MR. JUSTICE C.SARAVANAN

C.M.A. No. 2899 of 2018

The Manager,
The New India Assurance Co. Ltd.,
MTPCO, No.45, Moore Street,
Chennai - 600 001. ... Appellant/2nd Respondent

Vs.

1.Sasireka
2.Nirmala
3.Chandra
4.Narayanan ..Respondents 1 to 4/Petitioner 1 to 4

5.M/s. Ram Agencies
No.66, Bangalore High Road,
Sembarambakkam,
Poonamallee Taluk,
Tiruvallur District. ..5th Respondent/1st Respondent

6.The Manager (Legal)
ICICI Lombard Motor Insurance Co. Ltd.,
No.142, 1st Floor, ECR Road,
Near Latha Steel House,
Kottapalayam,
Pondicherry - 605 008 ... 6th Respondent/3rd Respondent

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act, 1988 praying to set aside the judgment and decree dated 18.04.2018 in M.C.O.P No. 43 of 2015 on the file of the Motor Accident Claims Tribunal(Special District Court) at Tiruvallur.

For Appellant : Ms.A.Salomi

For Respondents : Mr.G.Karthikeyan

JUDGMENT
(Delivered by M.M.Sundresh,J.)

Aggrieved over the award made in MCOP No.43/2015 for a sum of Rs.52,19,600/- with 7.5 % interest per annum, the present appeal has been filed by the appellant -Insurance Company, which is the second respondent in the claim petition.

2. The deceased, aged about 57 years, was proceeding in Hero-Honda Super Splendor Motor Cycle on 12.05.2009. The accident occurred by the collision of the vehicle driven by the deceased and the Ashok Leyland Tanker Lorry. In pursuant to the death of the deceased, respondents 1 to 4, being the claimants, approached the Tribunal seeking compensation of a sum of Rs.1,47,00,000/-. However, the claim was restricted to a sum of Rs.1 crore. The claimants are the wife and three children. On the side of the respondents/claimants, six witnesses have been examined i.e., PW1 to 6. PW1 is the wife of the deceased and PW2 is the son. The others are the eye witnesses. They have marked Exs. P1 to P31 to substantiate the negligence and the quantum to be fixed for the purpose of compensation sought for. The materials have been produced to show that the monthly income of the deceased was Rs. 2 lakhs. For the aforesaid purpose, the bank pass book of the deceased, statement of account and the loans sanctioned for the purchase of vehicles, which are lorry, and two JCB's, apart from the Bolero car used for commercial purposes.

3. On behalf of the appellant, only the insurance policy was marked apart from the evidence of only one witness. The second respondent was the New India Assurance Company Limited, which insured the two-wheeler in which the deceased was riding and actually belonged to the 4th claimant.

4. The trial Court after holding the negligence against the driver of the vehicle while taking note of the fine paid by him in admitting his guilt, proceeded further to fix the monthly income at Rs. 70,000/-, from which 20% was reduced towards the income tax, though there was no material to hold that the deceased was an assessee and, thereafter, the Tribunal added 10% towards future income. Accordingly, by applying the recent judgment of the Apex Court in National Insurance Company Ltd. v. Pranay Sethi, reported in (2017) 16 SCC 680, and placing reliance upon the judgment rendered in Sarla Verma v. Delhi Transport Corporation and another, reported in (2009) 6 SCC 121, the multiplier of 11 was fixed. Further sums of Rs.40,000/-, Rs.15,000/-, Rs.10,000/-, Rs.15,000/- and Rs. 1,50,000/- have been awarded towards loss of consortium, funeral expenses, transport expenses, loss of estate and loss of love and affection, respectively. Challenging the same, the present civil miscellaneous appeal has been filed.

5. Learned counsel appearing for the appellant would submit that the income at Rs.70,000/- has been fixed wrongly, especially when the deceased was not an assessee. The amount awarded under other heads also requires a re-look.

6. Learned counsel appearing for the respondents 1 to 4/claimants would submit that the documents filed are not in dispute. Admittedly, the deceased was carrying on business as evidenced from the documents produced, including the purchase of vehicles. He was also doing contract business, apart from agricultural operation. PW1 and PW2 have categorically deposed that the business has come down to a grinding halt after the death of the deceased and the vehicles have been sold. Therefore, what has been fixed by the Tribunal is just and fair compensation, which does not require interference.

7. On the conventional heads fixed, we do not find any error with the award of the Tribunal. Towards conventional damages, in all a sum of Rs.2,30,000/- has been fixed. Therefore, we are inclined to uphold the aforesaid amount fixed. Similarly, on the question of negligence also, taking note of the fact that the driver of the vehicle himself has pleaded before the criminal Court and paid the fine, we concur with the views of the Tribunal fixing negligence on his part. Also, there is no dispute with respect to the multiplier adopted along with the future income.

8. We find some force in the submission made by the learned counsel appearing for the appellant that the deceased was not shown to be an income-tax assessee. There is no basis upon which the income of Rs.70,000/- has been arrived. The evidence of P.Ws.1 and 2 with respect to the agricultural income is concerned, it could not be carried on because of the death of the deceased. Even otherwise, inasmuch as PW2 was also doing agricultural operation, we do not find any loss of estate. However, we find that transport business is something which has to be done personally by the deceased. There is sufficient evidence to show that the business was stopped by effecting sale of the vehicles. Admittedly, it was carried on by the deceased. In such view of the matter, we are inclined to fix the income at Rs.62,500/-. By adopting the same yardstick as done by the Tribunal, the total income would come to Rs.44,55,000/- (Rs.62,500/- - 20%(income tax)=50,000 +10% (future prospects)= Rs.55,000-1/4(personal expenses)= Rs.41,250/-x12x9 (multiplier) = Rs.44,55,000/-). By adding the conventional damages awarded i.e.,Rs.40,000/- towards loss of consortium, Rs.15,000/- for funeral expenses, Rs.10,000/- for transport expenses, Rs.15,000/- for loss of estate and Rs 1,50,000/- for loss of love and affection, (Rs.44,55,000/- + 2,30,000/-) the total compensation liable to be paid would come to Rs.46,85,000/-,

which is rounded-off to Rs. 47 lakhs.

9. Accordingly, the award of the Tribunal has been modified to Rs. 47 lakhs with 7.5 % interest in the same manner as awarded by the Tribunal. Out of the aforesaid amount, the first claimant (wife of the deceased) is entitled to get Rs.24,50,000/- and the claimants 2 to 4 (married daughters and son) are entitled to get Rs.7,50,000/- each. The appellant-Insurance company is directed to deposit the modified award amount along with proportionate interest, less the amount, if any, already deposited, to the credit of M.C.O.P No. 43 of 2015 on the file of the Motor Accident Claims Tribunal(Special District Court) at Tiruvallur, within a period of eight weeks from the date of receipt of a copy of the order. On such deposit, the claimants are permitted to withdraw their shares.

The appeal is partly allowed to the extent as indicated above. No costs. Consequently, connected CMP No. 22075 of 2018 stands closed.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

ssm
To:
1. The Motor Accident Claims Tribunal
(Special District Court) at Tiruvallur.

+1 CC to Mr.C.Ramesh Babu, Advocate sr 9810.
+1 CC to Mr.G.Karthikeyan, Advocate sr 9655

C.M.A.No. 2899 of 2018

KJ(CO)
SP(28/03/2019)