BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **04.01.2019**
CORAM:
THE HONOURABLE MR. JUSTICE **S.S.SUNDAR**
and
THE HONOURABLE MR. JUSTICE **C.SARAVANAN**

C.M.A.(MD) No.436 of 2016
and
Cross Obj. (MD) No.33 of 2018

C.M.A.(MD) No.436 of 2016

The Branch Manager,
The New India Assurance Company Ltd.,
No.84, A, Trivandram Road,
Tirunelveli - 2. : Appellant/2nd Respondent

Vs.

1.Rathi Harish : 1st Respondent/Petitioner
2.Minor Rubak : 2nd Respondent/Petitioner
(Minor represented by its Mother 1st respondent)
3.Vasanthi : 3rd Respondent/Petitioner
4.Sankaran : 4th Respondent/Petitioner
5.Jerlin Jose : 5th Respondent/1st Respondent

PRAYER: The Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988, praying to set aside the decree and judgment dated 27.10.2015 made in M.C.O.P.No.400 of 2012 on the file of Principal Sub Court, Tenkasi.

For Appellant : Mr.A.Ilango
For Respondents 1 - 4: Mr.D.Srinivasa Raghavan
For Respondent 5 : Mr.A.Rajkumar Sen

Cross Obj.(MD) No.33 of 2018

1.Rathi Harish
2.Minor Rubak
3.Vasanthi
4.Sankaran : Cross Objectors/Respondents 1-4/ Claimants
(2nd Cross Objector represented through her mother and Guardian Mrs.Rathi Harish, 1st Cross Objector/Claimants herein)

Vs.

1.The Branch Manager,
The New India Assurance Company Ltd.,
No.84-A, Trivandram Road,
Tirunelveli. : Respondent/Appellant/ 2nd Respondent

2.Jerlin Jose : Respondent/5th Respondent/ 1st Respondent.

PRAYER: The Cross Objection filed under Order 41, Rule 22 of Civil Procedure Code, praying to enhance the award of compensation passed in M.C.O.P.No.400 of 2012, dated 27.10.2015 on the file of Principal Motor Accident Claims Tribunal cum Principal Sub Court, Tenkasi and enhance the award amount to the Cross Objectors by allowing this Cross Objection.

For Cross Objectors : Mr.D.Srinivasa Raghavan
For Respondent 1 : Mr.A.Ilango
For Respondent 2 : Mr.A.Rajkumar sen

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COMMON JUDGMENT

(Judgment of this Court was delivered by **S.S.SUNDAR, J.**)

The Insurance Company, namely, the second respondent in M.C.O.P.No.400 of 2012 before the Principal Motor Accidents Claims Tribunal-cum-Principal Sub Court, Tenkasi, is the appellant in C.M.A.(MD) No.436 of 2016 and the claimants in M.C.O.P.No.400 of 2012 before the Principal Motor Accidents Claims Tribunal-cum-Principal Sub Court, Tenakasi, are the Cross Objectors in the Cross Objection.

2.On 27.05.2012 at about 9.00 a.m. the husband of the first respondent by name S.Harees met with an accident. Though the injured was taken to hospital and admitted as inpatient at Asaripallam Government Medical College Hospital in Kanyakumari District and thereafter at Nagercoil Muthu Neuro Centre for further treatment and again taken to Ananthapuri Hospital, Ananthapuram, Thiruvananthapuram, died on 28.05.2012 despite treatment. It is not in dispute that the husband of first respondent in the appeal died as a result of the accident. It is stated that the husband of first respondent was waiting in his two wheeler on the northern side of the road on the left extreme near Lakshmipuram Junction, Cholachel to Thingalchandai Main Road and that the Maruti car bearing Registration No.TN-75-H-2144 driven by the fifth respondent herein coming on the same road from west to east hit the husband of first respondent. It is the definite case of the respondents 1 to 4 (claimants) that the accident was caused by the rash and negligent driving of the fifth respondent in this appeal. The husband of the first respondent was working as Assistant Manager in Tamil Nadu Mercantile Bank. The first respondent is the wife of the deceased and the second respondent is the son of the deceased. The respondents 3 and 4 are the mother and father of the deceased. The respondents 1 to 4 filed the claim petition under Sections 166 and 140 of the Motor Vehicles Act for awarding compensation in M.C.O.P.No.400 of 2012 before the Principal Motor Accidents Claims Tribunal-cum-Principal Sub Court, Tenkasi. Though the claimants stated that the appellant herein who is the second respondent in M.C.O.P. is liable to pay a sum of Rs.2,63,20,000/- as compensation under various heads, the claimants restricted the compensation amount to Rs.1,50,00,000/-.

3.The appellant filed a counter disputing the contention that the driver of the four wheeler drove in a rash and negligent manner and that the accident was caused due to rash and negligent driving of Maruti Car driven by the fifth respondent herein. It is further stated that the deceased, namely, husband of the first respondent contributed to the accident by negligence and that the petition without impleading the owner and insurer of the two wheeler is not maintainable. In the petition filed by the claimants, it is stated that the deceased was drawing a salary of more than Rs.50,000/- per month at the time of accident.

4.The Tribunal awarded a sum of Rs.66,03,080/- with interest at the rate of 7.5% per annum from the date of petition. The Tribunal framed a specific issue as to who is responsible for the accident. Considering the facts and circumstances and the materials on record, the Tribunal has given a specific finding that the accident was caused due to the negligence of the fifth respondent, namely, the owner of the Maruti Car which caused the accident.

5.Since the husband of the first respondent was working as Assistant Manager in Tamil Nadu Mercantile Bank, the salary slip was marked as Ex.P3. The Tribunal relied upon the service particulars and the Salary Certificate and the annual statement of the salary of the deceased marked as Ex.X1 to X3 (third party documents) and arrived at the annual salary of the deceased at Rs.5,14,995/-. Taking into account the monthly salary of the deceased as Rs.42,916/- and deducting 1/3 towards personal expenses of the deceased fixed the permanent income of the deceased at Rs.28,666/- (rounded off to Rs.28,700/-). Since the age of the deceased was 41, relying upon the judgment of the Hon'ble Supreme Court, 14 was taken as multiplier. The Tribunal also added 30% of the salary towards future prospects. The Tribunal awarded a sum of Rs.62,68,080/- towards loss of income for the claimants. The Tribunal awarded a sum of Rs.2,00,000/-

towards love and affection and a sum of Rs.1,00,000/- towards loss of consortium to the wife. A further sum of Rs.10,000/- was allowed towards transportation and a sum of Rs.25,000/- was allowed towards funeral expenses. In all, a sum of Rs.66,03,080/- has been awarded by way of compensation along with interest at 7.5% per annum from the date of petition. The first respondent was found entitled to 50% and the second respondent was given 10%. The respondents 3 and 4 were each given 20% by way of apportionment. Aggrieved by the award, the Insurance Company, second respondent in the petition in M.C.O.P.No.400 of 2012 preferred the above appeal in C.M.A.(MD)No.436 of 2016 and the claimants have preferred the Cross Objection.

6.The learned Counsel appearing for the appellant submitted that the gross salary of the deceased was only Rs.34,067/- as per the salary slip and that the Tribunal has erroneously taken the monthly income as Rs.43,000/-. It is the case of the appellant that the Tribunal has added Rs.29,000/- towards accommodation as found in the annual statement and included a further sum of Rs.67,100/- under the head of other perquisites while assessing the annual income of the deceased. It is also contended by the learned Counsel for the appellant that as per the judgment of the Hon'ble Supreme Court in the case of ***Chanderi Devi and another v. Jaspal Singh and others*** reported in ***2015 ACJ 1612***, the gross salary of the deceased ought to be taken as Rs.34,067/- as per the salary slip and the claimants are entitled to a revision of 30% towards future prospects. The appellant contended that there should be a deduction of 10% towards income tax. It is also contended by the learned Counsel for the appellant that the amount awarded under the head of love and affection is excessive.

7.On behalf of the claimants/Cross Objectors, the learned Counsel appearing for them submitted that deduction of 1/3 from the monthly income for personal expenses is excessive and that the Tribunal ought to have deducted only 1/4 for the personal expenses of the deceased. On behalf of the claimants, it is further contended that the annual income of the deceased was Rs.5,14,905.50. It is contended that a sum of Rs.72,077/- was deducted (statutory deductions) for arriving taxable income. The net taxable income being Rs.4,41,043/-, the income tax payable was only Rs.2,360/-. It is contended that the net income tax payable was only Rs.2,360/- and that the deduction of 10% towards income is not necessary. The learned Counsel appearing for the Cross Objectors further submitted that as per the judgment of the Hon'ble Supreme Court reported in 2008 (2) SCC 763, the statutory deductions must be added to the annual income. Since the Tribunal has failed to add the sum of Rs.72,077/- the Tribunal has committed an error. On behalf of the claimants, it is further contended that the annual salary should be taken as Rs.4,85,760/- apart from adding 30% of the salary towards future prospects.

Since the deceased has left behind his wife, son and parents, the deduction should be 1/4 towards personal expenses it is contended on behalf of the appellant that the amount deductible would be a sum of Rs.1,57,812/- and that after deducting 1/4, a sum of Rs.4,73,616/- should be taken as the annual income of the deceased. Applying 14 as multiplier, the claimants requested this Court to award a sum of Rs.66,30,624/- towards loss of income.

8.Learned Counsels appearing on either side relied upon several precedents. Hence, it is necessary to consider them. The Hon'ble Supreme Court in the case of ***National Insurance Company Limited v. Indira Srivastava and others*** reported in ***2008 (1) TN MAC 166 (SC)*** has held that just compensation cannot be a bonanza or a source of profit and that the compensation has to be fixed by taking into account what would be just and equitable and all facts and circumstances. In the said judgment, it is also held that the medical reimbursement and tax elements cannot be taken as income. A Division Bench of this Court in the case of ***Oriental Insurance Company Limited vs. P.Lakshmi and others*** reported in ***2018 (2) TN MAC 182 (DB)*** has held that award of a sum of Rs.1,00,000/- towards loss of consortium and Rs.3,00,000/- towards loss of love and affection is contrary to the dictum laid in ***National Insurance Company Ltd., v. Pranay Sethi, reported in 2017 (2) TN MAC 609 (SC) : 2017 ACJ 270.*** The Division Bench awarded a sum of Rs.40,000/- towards loss of consortium and a sum of Rs.1,20,000/- towards loss of love and affection. In the case of ***Kanshigh and another v. Tukaram and others*** reported in ***2015 (1) TN MAC 1 (SC)*** the Hon'ble Supreme Court permitted 1/3 deduction towards personal expenses taking into account the fact that the claimants are only parents of the deceased. In the same judgment, 10% of the annual income was permitted to be deducted towards income tax. A Division Bench of this Court in the case of ***Royal Sundaram Alliance Insurance Company Limited v. E.Priya and others*** reported in ***2016 (1) TN MAC 480*** held that the income in addition to 50% towards future prospects would attract 20% deduction towards income tax. It would be appropriate that while making any deduction towards income tax, the statutory deductions permissible under the Income Tax Act cannot be taken for the purpose of arriving taxable income but it cannot be deducted while arriving at the annual income of deceased.

9.In this case, it is admitted that as per Ex.X3, the annual income of the deceased was Rs.5,14,905.50. The net taxable income was only Rs.4,41,043/- after statutory deductions. As a matter of fact, the income tax calculated was just Rs.2,360/- towards income tax. A sum of Rs.72,077/- which was deducted as statutory deductions, has to be included as income of the deceased. So doing, the annual income of the deceased would be Rs.5,13,120/-. Adding 30% towards future prospects, the annual income of the deceased should be taken as Rs.6,67,056/-.

Deducting 10% towards income tax and 1/4 towards personal expenses, the annual income for the purpose of loss of income would be Rs.4,50,260/-. Applying 14 as multiplier, the claimants are entitled to sum of Rs.63,03,640/- towards loss of income. As it has been held by a Division Bench of this Court above referred to following ***Pranay Sethi's*** case and the Hon'ble Supreme Court in the case of Magma General Insurance Company Limited v. Nanu Ram Alias Chuhru Ram and others, the claimants are entitled to a sum of Rs.1,20,000/- towards loss of consortium and a sum of Rs.1,00,000/- towards love and affection. The claimants are also entitled to a sum of Rs.15,000/- towards funeral expenses and a sum of Rs.50,000/- towards loss of estate apart from a sum of Rs.10,000/- towards transportation. Accordingly, the award of the Motor Accident Claims Tribunal, Tenkasi, is modified and a sum of Rs.65,98,640/- is awarded as pointed out above.

10.The Tribunal has awarded 50% to the first respondent and 10% to the second respondent. The fourth respondent, namely, the father of the deceased has been awarded 20%. Father is not a Class-I heir of the deceased. Hence, regarding the apportionment, the award of the Tribunal is modified and the first respondent is entitled to 40%. Considering the life expectancy, the respondents 1 and 2 are entitled to each 40% and the third respondent is entitled to 20% of the compensation as per this order. The second respondent being minor, the compensation payable to him should be kept in a deposit in a nationalised bank till he attains majority and the first respondent, as guardian of second respondent, is entitled to withdraw the interest accrued. Therefore, the appeal is partly allowed as indicated above and the Cross Appeal is dismissed. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

To
The Principal Sub Court,
Tenkasi.

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The Section Officer,
VR Section
Madurai Bench of Madras High Court,
Madurai-2 copies

+1 CC to M/s.A.ILANGO, Advocate (SR-40556[F] dated 07/01/2019)

+1 CC to M/s.D.SRINIVASARAGAVAN, Advocate (SR-40493[F] dated 04/01/2019)

srm

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