IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:05.10.2020

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.M.A.NO.439 OF 2016
AND
C.M.P.NO.3396 OF 2016

Royal Sundaram Alliance Insurance Co.Ltd.,
Represented by its Divisional Officer,
No.21, Pattullos Road, Chennai.

...Appellant/2nd Respondent

/versus/

1.Vendamirtham
2.Minor Dhivya
3.Minor Dhinesh Kumar
(Minors rep. By their mother and
next friend Vendamirtham)
4.G.Kalaiselvi
5.T.Gopal

...Respondents 1 to 5/Claimants

6.P.Saravanan

...6th Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the judgment and decree made in M.C.O.P.No.167 of 2009, on the file of the Motor Accidents Claims Tribunal, (Principal Subordinate Judge) Chengalpattu dated 27.02.2015.

For Appellant : Mr.M.Krishnamoorthy

For Respondents : Dr.S.S.Swaminathan
for R1 to R3 & R5
R4-Died
R6-Exparte

J U D G M E N T

(The case has been heard through video conference)

This appeal is filed by the Insurance Company aggrieved by the quantum of compensation awarded to the claimants by the Tribunal for the death of Manivannan in the motor accident occurred on 05.02.2009.

2.As per the claim petition, the deceased was self-employed and earning Rs.15,000/- per month as a contractor under the Small Scale Industry and other motor rewinding work. He died leaving behind his wife, two minor children and parents. However, pending appeal, his mother died. The Tribunal after considering the material placed before it, had awarded a sum of Rs.19,85,360/- as compensation to the claimants.

3.The appeal is filed by the insurance company on the ground that the fixation of income for applying the multiplier is excessive and additional 50% towards future prospects is contrary to the dictum laid down by the Hon'ble Supreme Court.

4.The learned counsel appearing for the appellant/Insurance Company would submit that the documents filed by the claimants and relied on by the Tribunal does not disclose the actual income of the deceased. The income certificate marked as Ex.P11 is only a clearance certificate issued by the Tax Department indicating that the deceased has filed an affidavit stating that he has no taxable income. In such circumstances, the Tribunal ought not to have fixed the income of the deceased as Rs.8,400/- and added 50% towards future prospects. Out of which, only 1/5th is deducted for his personal expenditure. Thus, the excess compensation awarded by the Tribunal has to be reduced.

5.Per contra, the learned counsel appearing for the claimants/respondents would submit that the deceased was a registered contractor under TWAD Board and he was engaged for repairing electrical motors. He was also a registered under the Small Scale Industries and the District Industrial Centre for rewinding electrical motors on job work basis. Therefore, the Tribunal has fixed the monthly income at Rs.8,400/-, though they claimed for Rs.15,000/- per month.

6.As far as additional 50% towards future prospects is concerned, the learned counsel appearing for the respondents/claimants would fairly conced that as per the judgment of the Hon'ble Supreme Court in National Insurance Company v. Pranay Sethi and others reported in (2017(2)TNMAC 609(SC)), future prospects should only be 40% for a person below the age of 40 and under self employment. Regarding the deduction towards the personal expenditure, the error of the Tribunal deducting only 1/5th instead of 1/4th has been accepted by the learned counsel.

7.The learned counsel appearing for the appellant/Insurance Company would submit that the principles of Pranay Sethi case need not be applied to the accident occurred on 05.02.2009, nearly 8 years prior to the jugment of Pranay Sethi case. The standardized formula provided by the Hon'ble Supreme Court in Pranay Sethi case need not necessarily be applied in all the cases, which have been disposed of long back, more particularly when the accident had occurred prior to 2010.

8.Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents/claimants and perused the records.

9.Considering the submissions made by the learned counsels on either side and the records, this Court finds that the award of the Tribunal requires modification.

10.In the present case, the income of the deceased fixed by the Tribunal as Rs.8,400/- is upheld. To this basic income, 40% of his monthly income has to be added towards future prospects. From out of that, 1/4th has to be deducted for his personal expenditure and after deducting 1/4 towards his personal expenditure, the multiplier ''16'' has to be applied. Accordingly, a sum of Rs.16,93,440-00 ([8400 +3360(FP)] x 3/4x12x16) is awarded for loss of dependency. Under the non-conventional head Rs.15,000/- is awarded towards funeral expenses and Rs.15,000/- is awarded towards loss of estate. Rs.40,000/- is awarded for loss of consortium for the 1st claimant and Rs.60,000/- is awarded for loss of love and affection to the claimants 2, 3 and 5 (Rs.20,000/- each). Totally, a sum of Rs.18,23,440-00 is awarded as compensation to the claimants.

11.The break up details of the modified award passed by this Court as below:

Sl.No	Particulars	Modified award passed by this Court (Rs.)
1.	Loss of dependency (Rs.8400+40%(Rs.3360)= 11760-1/4(Rs.2940)=8820x12x16)	16,93,440-00
2.	Loss of funeral expenses	15,000-00
3.	Loss of estate	15,000-00
4.	Loss of consortium to the 1st claimant	40,000-00
5.	Loss of love and affection to the claimants 2 to 4(Rs.20,000x3)	60,000-00
	Total	18,23,440-00 rounded off 18,23,400-00

Since the 4th claimant mother has already died, the compensation awarded by this Court shall be apportioned to the claimants 1,2,3, and 5 herein as under:-

1st claimant / wife	5,07,800
2nd claimant / minor daughter	5,07,800
3rd claimant / minor son	5,07,800
5th claimant/father	3,00,000-00

12.As per order of this Court dated 02.03.2016, the appellant/insurance company has already deposited the entire award amount passed by the Tribunal with interest at the rate of

7.5% to the credit of M.C.O.P.No.167 of 2009 and the claimants were permitted to withdraw the 50% of their respective shares from the amount deposited with proportionate interest. Hence, the claimants1 and 5/respondents 1 and 5 are permitted to withdraw the balance award amount as modified in the appeal, less the amount already withdrawn, if any. The appellant/Insurance Company is permitted to withdraw the excess amount on filing appropriate application. The share of the minor claimants 2 and 3 shall be deposited into a Nationalised Bank, till they attain majority. The 1st claimant/mother shall withdraw the interest from the minors share amount for welfare of their children.

13. In the result, the civil miscellaneous appeal is partly allowed. No order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-I)

// True Copy //

Sub Assistant Registrar

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To:

1. The Motor Accidents Claims Tribunal,
   Principal Subordinate Judge, Chengalpattu.

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

+1cc to M/s.S.S.Swaminathan, Advocate, S.R.No.33035

C.M.A.No.439 of 2016

PP(CO)
RLP(25/11/2021)