IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 25.02.2020

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN
AND
THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A. No. 2682 of 2019

1. M. Bhagyam
2. V. Murali ..Appellants/Claimants

Vs.

1. R. Nandagopal

2. New India Assurance Co. Ltd.,
Motor III Party Claims Office,
No.45, Moore Street,
Chennai -1. ..Respondents/ Respondents

Prayer: Civil Miscellaneous Appeal as against the judgment and decree dated 27.11.2018 made in MCOP No. 2960 of 2016 on the file Motor Accident Claims Tribunal of II Judge, at Small Causes Court, Chennai.

For Appellants :: Mr.T.G. Balachandran
For Respondents:: R1 - Exparte
Mr.J. Chandran for R2

J U D G M E N T

(Judgment of the Court was delivered by N. KIRUBAKARAN,J.)

The appeal has been preferred by the claimants aggrieved over the adequacy of compensation of Rs.51,00,000/- awarded by the Tribunal for the death of their son, by name, Dinesh Murali, aged about 27 years, employed as Supervisor in Renault-Nissan Car Company Limited, Oragadam, Tamil Nadu, alleged to have been earning about Rs. 42,500/- per month, in the accident, which occurred on 01.03.2016 when he was hit down by a two-wheeler insured with the Insurance Company, driven rashly and negligently, while he was crossing Anna Salai from West to East near the junction of CIT Nagar, 1st Main Road, Nandanam Anna Salai. Therefore, the claim petition was filed.

2. On contest, the Tribunal found that the accident occurred because of rash and negligent driving of the two-wheeler and fixed the negligence on the part of the driver of the two-wheeler.

3. Based on Ex.P19 series, pay slips of the deceased, the Tribunal took the average of gross salary of the deceased for three months from December, 2015 to February, 2016 i.e, Rs.38,348/-, Rs.41,317/- & Rs.44,888/-, arrived at monthly income of Rs.35,455/- and rounded off the same to Rs.35,500/-. Since the deceased was aged 27 years and was also an employee in a Private Company, the Tribunal, following the judgment of the Hon'ble Supreme Court in National Insurance Company Limited V. Pranay Sethi and others reported in 2017 ACJ 2700, added 40% towards "Future Prospects" and in the light of the judgment rendered in Sarla Verma's case (Smt. Sarla Verma & Ors V. Delhi Transport Corporation and Another reported in 2009 ACJ 1298 SC), applied multiplier 17 and arrived at Rs.1,01,38,800/- as compensation payable to the claimants towards "Loss of Income". Since the deceased died as a bachelor, 50% was deducted towards "Personal Expenses" and after such deduction, Rs.50,69,400/- was determined as "Loss of Income" and towards "Loss of Estate" and "Funeral Expenses", a sum of Rs.15,000/- was awarded under each caption and in all, a sum of Rs. 50,99,400/- rounded off to Rs.51 lakhs was arrived at as compensation.

4. The said award was challenged by the Insurance Company earlier before this Court in C.M.A. No. 2802 of 2019 and this Court, at the time of admission itself, dismissed the appeal by judgment dated 12.07.2019 without notice to the claimants, namely, the respondents in the said appeal and while doing so, the compensation payable was enhanced to Rs.51,10,000/-.

5. When the matter is taken up, Mr.J.Chandran, learned counsel appearing for the Insurance Company would question the maintainability of the appeal itself as the issue has been already decided in the appeal filed by the Insurance Company in C.M.A. No. 2802 of 2019 and that therefore, again, the appeal filed by the claimants cannot be entertained. According to the learned counsel, the matter cannot be re-opened and there would be no finality if every matter is sought to be re-opened and he would submit that law of merger and res judicata will also get attracted.

6. However, Mr.T.G. Balachandran, learned counsel appearing for the claimants would submit that the appeal filed by the Insurance Company was dismissed without notice to the claimants and therefore, the question of res judicata as well as merger will not arise.

7. It is a fact that without notice to the claimants, the appeal filed by the Insurance Company was dismissed. The main contention raised by the Insurance Company was with regard to the question of liability whereas the main contention raised by the claimants in this appeal is with regard to the quantum of compensation. The claimants were not heard at the time of dismissal of the appeal filed by the Insurance Company and therefore, there is no legal impediment to entertain this appeal and therefore, the objection raised by Mr. J. Chandran is liable to be rejected and accordingly, it is rejected.

8. Mr.T.G. Balachandran, learned counsel for the claimants would point out that Renault-Nissan Car Company is a multinational company and the claimants' son was employed permanently and therefore, 50% has to be added towards "Future Prospects" following the judgment of the Honourable Supreme Court in Pranay Sethi's case. He has also produced the salary certificate to show that the deceased was earning about Rs.42,500/- and submit that the said amount has to be taken as monthly income and 50% has to be added towards "Future Prospects". However, Mr.J. Chandran, learned counsel appearing for the Insurance Company would submit that eventhough the company in which the deceased was employed is a multinational company, the terms of appointment would state that at any time, the deceased would be terminated and therefore, 40% alone has to be added towards "Future Prospects" in consonance with the law declared by the Honourable Supreme Court.

9. This Court has considered the submissions made by both sides.

10. It is a fact that the claimants' son was an Engineer, employed at Renault-Nissan Car Company, which is a multinational company and it is stated to be a permanent job. Still, it cannot be equated to a Government job. As rightly pointed out by Mr.J. Chandran, a private management can, at any time, terminate the services of its employee. Therefore, 40% added towards "Future Prospects" by the Tribunal is confirmed.

11. Similarly, Rs.35,500/- taken as the monthly salary of the deceased cannot be disturbed as the Tribunal, after

examining all the documents, especially Ex.P19 series, pay slips, taking the average of gross salary for the months of December 2015 to February, 2016, namely, RS.38,348/-, Rs.41,317/- and Rs.44,888/- , fixed Rs.35,500/- as the monthly salary of the deceased. The said amount has been arrived at based on evidence and therefore, the same cannot be re-determined as submitted by the learned counsel for the claimants.

12. However, a perusal of the award would denote that no amount was awarded towards "Loss of Love and Affection". The appellants, with a fond hope that the deceased would look after them in their old age, had educated him and made him as an Engineer and the deceased was also able to secure a job in a renowned multinational company, but the happiness was short-lived, as fate had other plans and the accident in question claimed the life of the appellants' son. The appellants definitely have to be compensated for "Loss of Love and Affection" under which head no amount was awarded by the Tribunal. Since the deceased died young at the age of 27 years, it is appropriate to award a sum of Rs.50,000/- to each of the appellants towards "Loss of Love and Affection", amounting to Rs.1 lakh totally.

13. In the result, the appeal stands partly allowed and the compensation awarded by the Tribunal, ie., Rs.51,00,000/-, which was subsequently enhanced to Rs.51,10,000/- while dismissing the appeal filed by the Insurance Company in C.M.A. No.2802 of 2019 is now enhanced to Rs.52,10,000/- in this appeal filed by the claimants. The rate of interest awarded by the Tribunal @ 7.5% per annum remains unaltered. No costs.

14. The excess court-fee already paid by the appellants shall be refunded to them.

15. The Insurance Company is directed to deposit the entire compensation amount, as per the modified award passed by this Court today, along with interest and costs, after deducting the amount, alredy deposited, if any, within a period of four weeks from the date of receipt of a copy of this order failing which the Chairman-cum-Managing Director shall appear before this Court. On such deposit being made, the Tribunal is directed to transfer the respective shares of the appellants to their bank accounts,

as per the ratio fixed by the Tribunal, through RTGS, within a period of two weeks thereafter.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

The Judge,
Motor Accident Claims Tribunal,
(II Court of Small Causes),
Chennai.

2.The Chairman-cum-Managing Director,
New India Assurance Co. Ltd.,
Motor III Party Claims Office,
No.45, Moore Street,
Chennai -1.

Copy to:
1.The Section Officer,
VR Section, High Court,Madras.

2.The Section Officer,
(Correspondence seat)
Current Section,
High Court,Madras .

C.M.A. No. 2682 of 2019

A.SK(11/11/2020)