

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.06.2015

CORAM

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

C.M.A.No.1090 of 2015

and

M.P.No.1 of 2015

National Insurance Co. Ltd.,
N-1, BMC House,
Connaught Place,
New Delhi- 110 001.

.. Appellant/2nd Respondent

Vs.

1.Balammal
2.Vengateeswari
3.Saravanakumar
4.Narayanasamy

.. Respondents 1 to 4/
Petitioners.

5.Chinnasamy

.. 5th Respondents/
1st Respondent.

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act-1988 against the judgment and decree dated 20.06.2014 made in M.C.O.P.No.623 of 2013 on the file of Motor Accidents Claims Tribunal/II Additional District Court, Tirupur.

For Appellant : Mr.S.Vadivel

For Respondents : Mr.MA.P.Thangavel for R1 to R4

JUDGMENT

The appeal has been preferred by the Insurance company against the award of Rs.10,20,000/- for the death of one A.Subramanian, aged about 55 years, Powerloom Worker, alleged to be earning about a sum of Rs.10,000/-, in the accident occurred on 22.04.2013 and died on 25.04.2013, after taking treatment.

2. Heard Mr.S.Vadivel, learned counsel appearing for the appellant and Mr.Ma.P.Thangavel, learned counsel appearing for respondents 1 to 4.

3. The only question is to be decided with regard to the quantum. According to the learned counsel for the appellant as per Ex.P.2, Postmortem certificate and Ex.P3, Death Certificate, the age of the deceased was 56 years and whereas, the Tribunal determined the age of the deceased at 55 and adopted the multiplier 11, which is, according to him, on the higher side and it should be 9.

4. However, Mr.Ma.P.Thangavel, learned counsel appearing for respondents 1 to 4/claimants would submit that a sum of Rs.7,500/- determined by the Tribunal as monthly income is on the lower side as the accident occurred in the year 2013. Moreover, the minimum wages for a power-loom worker is Rs.500/- per day and even if 21 days is calculated as working days in a month, it comes about Rs.10,500/-. Therefore, he seeks for enhancement.

5. Considering the arguments made by the learned counsel appearing for respondents 1 to 4/claimants, it is evident that a sum of Rs.7,500/- determined by the Tribunal as monthly income for a power-loom worker is on the lower side as the accident was occurred in the year 2013. Therefore, this Court determines the monthly income of the deceased at Rs.10,000/-.

6. Though Mr.Ma.P.Thangavel, learned counsel appearing for respondents 1 to 4/claimants would submit that there are four dependents and 1/4th alone is to be deducted, this Court deducts 1/3rd only as all the dependents are major. As rightly pointed out by Mr.Vadivel, the learned counsel appearing for the appellant, it is evident from the records Exs.P2 and P3, that the age of the deceased was 56 years, the appropriate multiplier is 9 and not 11 as adopted by the Tribunal. Therefore, the loss of income is determined as follows: $10,000 - 1/3 \times 12 \times 9 = 7,20,036/-$

7. The Tribunal awarded a sum of Rs.1,00,000/- towards loss of consortium to the 1st respondent. As per the judgment of the Honourable Supreme Court in Rajesh & Others Vs. Rajbir Singh & Others reported in 2013 (3) CTC 883, the amount awarded towards loss of consortium is just and reasonable and therefore, the same is confirmed. However, Rs.2 lakhs awarded towards loss of love and affection to respondents 1 to 4 is on the higher side and therefore, the same is reduced to Rs.60,000/-. A sum of Rs.20,000/- awarded towards medical expenses, as per Ex.P5, is confirmed. No amount was awarded towards pain and sufferings. As the deceased died after three days of hospitalization, the respondents would have suffered mental agony by seeing the first respondent's husband suffering. Therefore, a sum of Rs.10,000/- is awarded towards pain and sufferings. Rs.20,000/- towards transport charges and funeral expenses awarded by the Tribunal is hereby confirmed. Totally this Court awards a sum of Rs.9,50,036/- as compensation. Rounded off to Rs.9,50,000/-. The rate of interest awarded by the Tribunal at 7.5% p.a remains unaltered.

8. In view of the above modification, this Civil Miscellaneous Appeal is partly allowed and the award of Rs.10,20,000/- is hereby reduced to Rs.9,50,000/- along with interest at 7.5% p.a. No costs. Consequently, connected miscellaneous petition is closed.

9. The learned counsel for the appellant is directed to deposit the entire amount along with interest and costs, after adjusting the amount if any already deposited, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the respondents 1 to 4/claimants are permitted to withdraw their respective shares as fixed by the Tribunal, after adjusting the amount if any already withdrawn, with accrued interest within a period of one week thereafter.

vsm

s/d-

Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

The Motor Accidents Claims Tribunal
II Additional District Judge, Tirupur.

+ 1 cc to Mr.S.Vadivel, Advocate SR 29782

+ 1 cc to Mr.Ma.P.Thangavel, Advocate SR 29982

vd(co)

prk6/8

सत्यमेव जयते

C.M.A.No.1090 of 2015

WEB COPY