IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2015

CORAM

THE HONOURABLE MR. JUSTICE **N. KIRUBAKARAN**

C.M.A. No. 1097 of 2015

1. Joseph
2. Leema Rose ..Appellants

Vs.

1. S. Athiyappan

2. TATA AIG General Insurance Co. Ltd.,
Head Office Peninsula Corporate Park,
Nicholas Piramal Tower, 9th Floor,
Ganpatrao Kadam Marg, Lower Parel,
Mumbai 400 013.
Regional Office No.1, College Road,
Egmore, Chennai – 600 008. ..Respondents

Prayer: Civil Miscellaneous Appeal as against the judgment and decree dated 12.02.2015 passed in M.C.O.P. No. 3530 of 2013 by the Motor Accidents Claims Tribunal (Chief Judge, Small Causes Court), Chennai.

For Appellant :: Mr.P. Anbarasan

For Respondents :: Mr.M.B. Raghavan for Mr.N. Vijayaraghavan for R2

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred by the claimants as against the quantum of compensation awarded by the Tribunal to the tune of Rs. 6,92,000/- for the death of their son, by name, Savariraj @ Raja, aged about 25 years, alleged to be earning about Rs.10,000/- per month as a Driver, in the accident, which occurred on 18.07.2011.

2. Heard Mr.P. Anbarasan, learned counsel for the appellants and Mr.M.B. Raghavan, learned counsel for the 2nd respondent Insurance Company.

3. Though the appellants stated that the deceased was earning Rs.10,000/- as monthly income in the claim petition, when the father of the deceased was examined as P.W.1, he deposed that the deceased was working as a Driver in ASA Transport, Sriperumbudur, and was earning Rs.12,000/- as salary including batta and marked the salary certificate issued by ASA Transport to that effect as Ex-P5. However, in the counter filed by the the 1st respondent herein, who is the employer of the deceased, it was stated that the deceased was paid a monthly salary of Rs.10,000/- including daily batta. Since no other witness was examined to prove either the avocation or the income of the deceased, the Tribunal refused to believe the evidence of P.W.1 and determined the monthly income at Rs.6000/-. Since the deceased was a bachelor, 50% deduction was made towards “Personal Expenses” and as per

the age of the deceased, multiplier 17 was applied and a sum of Rs.6,12,000/- was awarded towards “Loss of Income” by the Tribunal.

4. No doubt, there is no believable evidence to come to the conclusion that the deceased was earning about Rs.12,000/- per month. In any event, this Court, in the light of the judgment of the Honourable Apex Court rendered in ***Syed Sadiq and others V. Divisional Manager, United India Insurance Company Limited*** reported in ***2014 ACJ 627,*** wherein Rs.6500/- was taken as the monthly income of a vegetable vendor, while calculating the compensation payable for the injuries sustained by him in the accident, which occurred in the year 2008 and after adding 50% of the monthly income towards “Future Prospects”, a sum of Rs.9,750/- was arrived at as total monthly income, this Court, determines Rs.10,000/- as the monthly income of the deceased in the case on hand, instead of Rs.9,750/- as determined by the Honourable Apex Court in the above cited case. Hence, Rs.10,000/- is determined as the monthly income of the deceased.

5. Since the deceased was a bachelor, 50% of monthly income is required to be deducted towards “Personal Expenses”. Hence, after deduction, the “monthly contribution of the deceased to his family” would be,

Monthly Income :: Rs.10,000/-

Less; 50% of monthly income :: Rs.10,000/- (-) 50% (Rs.10,000/-)

Monthly Contribution:: Rs.5000/-

As per the age of the deceased, the appropriate multiplier to be adopted, as rightly done by the Tribunal, following the judgment of the Honourable Apex Court rendered in ***Smt. Sarla Verma & Ors V. Delhi Transport Corporation and Another*** reported in ***2009 ACJ 1298 SC*** is 17. Therefore, applying the said multiplier, "Loss of Income" is calculated thus:

Loss of Income :: Rs.5000 x 12 x 17

:: **Rs.10,20,000/-**

6. The Tribunal awarded a sum of Rs. 50,000/- towards "Loss of Love and Affection" to the appellants, being the parents of the deceased. The said amount is comparatively less and therefore, the same is enhanced to Rs.1 lakh. The amounts awarded under other heads, namely, Rs.25,000/- towards "Funeral Expenses" and Rs.5000/- towards "Transport Expenses" are reasonable and are confirmed. Totally, a sum of Rs.11,55,000/- rounded off to Rs.11,50,000/- is the compensation payable to the appellants and the award of the Tribunal, to the tune of Rs.6,92,000/- is enhanced to Rs.11,50,000/-. The rate of interest awarded by the Tribunal at 7.5% per annum remains intact.

7. The 2nd respondent Insurance Company is directed to deposit the entire amount, as per the modified award passed by this Court, with interest

and costs, after deducting the amount, if any, already deposited, before the Tribunal, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the appellants are permitted to withdraw their respective shares, as per the ratio fixed by the Tribunal, within a period of one week thereafter. The appellants shall pay additional court-fee for the enhanced amount, if any.

8. In the result, the Civil Miscellaneous Appeal is allowed and the award of the Tribunal to the tune of Rs.6,92,000/- is enhanced to Rs.11,50,000/- with interest @ 7.5 % per annum. No costs.

19.06.2015

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To

The MACT (Chief Judge, SCC),

Chennai.

N. KIRUBAKARAN,J.

nv

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