IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.07.2015

CORAM

THE HON'BLE MR.JUSTICE N. KIRUBAKARAN

C.M.A.No.1115 of 2015

1.Thirumalvalavan @ Kambadasan
2.Minor Saravanabavan
3.Minor Panimalar
Minors are represented by their
father / Next Friend, the 1st Appellant ..Appellants/Petitioners.

/vs/

1.Elaiyaraja
2.M.Panneerselvam
3.The Zonal Manager,
Cholamandalam MS General Insurance Company Ltd,
No.1, Village Road, Dare House,
Nungambakkam,
Chennai - 34. ..Respondents/Respondents.

Prayer: Civil Miscellaneous Appeal preferred under Section 173 of the Motor Vehicles Act, against the judgment and Decree dated 30.08.2012 made in M.C.A.T.O.P.No.18 of 2012 on the file of the Motor Accident Claims Tribunal - cum - District Judge, Karikal, in so far as it relates to quantum of compensation.

For Appellants : Mr. G.K.Ilanthiraiyan
For Respondents : Mr.M.B.Raghavan
Mr.N.Vijayaraghavan for R3

JUDGMENT

This Civil Miscellaneous Appeal has been preferred by the claimants against the award of Rs.4,57,000/- for the death of one Kalaiyarasi, wife of the 1st appellant/mother of appellants 2 & 3, aged about 40 years, alleged to be running a mess, earning about a sum of Rs.500/- per day, in the accident occurred on 24.10.2011.

2. Heard, Mr.G.K.Ilanthiraiyan, counsel for the appellants Mr.M.B.Raghavan, learned counsel appearing for the 3rd respondent.

3. The only question to be decided is with regard to the quantum of compensation.

4. Though, the claimants contended that the deceased was running a mess and earning a sum of Rs.500/- per day, in the absence of any supportive evidence, the Tribunal determined the monthly income at Rs.5,000/- and deducted 1/3rd towards her personal expenses and adopting multiplier 11, arrived at Rs.4,40,000/- as loss of income. Along with other amounts, a sum of Rs.4,57,000/- was awarded as compensation.

5. The Tribunal, in the absence of any material evidence, rightly determined, the monthly income of the deceased at Rs.5000/-. However, no amount was added towards "Future Prospects". Since deceased was aged about 43 years, as per Ex.P5 postmorterm certificate, 30% is required to be added towards "Future Prospects". If 30% is added, then total monthly income would be,

Total Monthly Income :: Rs.5,000+30%(Rs.5000/-)
:: Rs.6,500/-

6. As the size of the family of the deceased is three, 1/3rd was righthly deducted by the Tribunal towards "Personal Expenses". After deduction of 1/3rd , the "Monthly contribution of the deceased to her family" is calculated as follows:

Monthly contribution of
the deceased to her family :: Rs.6,500 (-) 1/3 (Rs.6,500/-)

:: Rs.4333/-.

The tribunal wrongly adopted multiplier '11'. As per the age of the deceased was 43 as per Ex.P5, the right multiplier is 14 and applying the said multiplier, the loss of income is determined as follows:-

Loss of Income :: Rs.4333 x 12 x 14=7,27,944/-

7. The first appellant, as the husband of the deceased, is entitled to "loss of consortium". But, the Tribunal awarded a negligible amount of Rs.5,000/-. As per the judgment of the Hon'ble Supreme Court in Rajesh and others Vs. Rajbir Singh and others reported in 2013 (3) CTC 883, atleast a sum of Rs.1,00,000/- has to be awarded. Therefore, Rs.5,000/- awarded towards "loss of consortium" is enhanced to Rs.1,00,000/-.

8) The second and third appellants are minor children of the deceased and they were given only a sum of Rs.5,000/- each towards "loss of love and affection" which is on the lower side. Therefore, a sum of Rs.60,000/- totally is awarded under the said head. Rs.2,000/- towards award "Funeral Expenses" is enhanced to Rs.20,000/- towards "Funeral and Transport Expenses". Hence, the award of Rs.4,57,000/- is enhanced to Rs.9,07,944/- is rounded off Rs.9,00,000/- along with interest at 7.5% per annum.

9. The first appellant is entitled to Rs.4,00,000/- and the second and third appellant are equally entitled to Rs.2,50,000/- each along with proportionate interest and cost.

10. The third respondent is directed to deposit the entire amount, as per the modified award passed by this Court, along with interest and costs, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the 1st appellant is entitled to withdraw his share within one week thereafter. As far as the minors shares are concerned, they are directed to be deposited in interest bearing fixed deposit in anyone of the Nationalized banks till they attain majority. The 1st appellant is permitted to withdraw interest accruing on such deposit once in three months. The appellants shall pay additional court-fee for the enhanced amount, if any.

11. In the result, the Civil Miscellaneous Appeal is partly allowed enhancing the award passed by the Tribunal, from Rs.4,57,000/- to Rs.9,00,000/-. No costs.

nvi

s/d-

Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

To

The District Judge,
Karaikal.

Copy to:

The Section Officer
VR Section, High Court,
Madras.

+ 1 cc to Mr.M.B.Gopalan, Advocate SR 37939

+ 1 cc to Mr.D.Bharatha Chakravarthy, Advocate SR 37359

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