IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2015

CORAM

THE HON'BLE MR. JUSTICE V.RAMASUBRAMANIAN
and
THE HON'BLE MR. JUSTICE T.MATHIVANAN

C.M.A. No.1158 of 2015
and
M.P.No.1 of 2015

The Manager,
The New India Assurance Company
Ltd., Division Office,
No.69, Sheikpet Nadu Street,
Kancheepuram. .. Appellant/2nd Respondent.

vs

1.R.Dhanalakshmi
2.R.Shamili (minor)
3.R.Manoj (minor)
4.S.Narayani
5.A.Subramani .. Respondents 1 to 5/Claiments 1 to 5

6.P.Sekar .. 6th Respondent/1st Respondent.
(minor respondents 2 and 3
are rep. By their mother R1)
R6 set exparte in the lower court.
Hence given up

Appeal filed under section 173 of the Motor vehicles Act 1988 against the award and decree passed in M.C.O.P.No.112 of 2014 on 09.01.2015 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge), Tiruttani.

For Appellant .. Mr.R.Sivakumar

For Respondents .. Mr.K.R.Ponnusamy for R1 to R5
R6 - given up

JUDGMENT

(Judgment of the Court was delivered by V.RAMASUBRAMANIAN, J.)

This appeal at the instance of the insurance company is directed against the award of the motor accidents clams tribunal.

2.Heard Mr.R.Sivakumar, learned counsel appearing for the appellant and Mr.K.R.Ponnusamy, learned counsel appearing for the respondents 1 to 5.

3.In a motor accident that occurred on 20.02.2014, one Mr.Raja died, leaving behind his wife, two minor children and his parents. All of them joined together and filed M.C.O.P. No.112 of 2014 claiming compensation in a sum of Rs.30,00,000/-.

4.By an award passed on 09.01.2015, the Tribunal fixed the compensation payable at Rs.23,05,960/-. Aggrieved by the award, the insurance company is before us.

5.The liability is not seriously contested. The appeal is primarily directed against the quantum.

6.The fact that the deceased was employed as a casual labour under a contractor in the Madras Rubber Factory is not disputed. The salary certificate issued by the contractor to the deceased was filed as Ex.P13. It showed that the gross monthly income of the deceased was Rs.8,317/-. The Tribunal applied multiplier of 16, after adding 50% towards future prospects. The Tribunal thus arrived at the loss of dependency at Rs.17,95,960/-.

7.The Tribunal also awarded a sum of Rs.4,00,000/- towards loss of love and affection for the wife, two minor children and the parents. A sum of Rs.1,00,000/- was awarded towards loss of consortium. A sum of Rs.10,000/- was awarded towards funeral expenses, taking the total to Rs.23,05,960/-.

8.On the amount of wages that the deceased earned, the appellant cannot have any dispute. Ex.P13 shows that the monthly income was Rs.8,317/-. But the same included a sum of Rs.512/- towards overtime and Rs.625/- towards attendance incentive. Therefore, it is contended by Mr.R.Sivakumar, learned counsel for the appellant that these two amounts should be deducted.

9.But we cannot agree. The overtime charges and attendance incentive are part and parcel of the total wages, especially, for a person employed through a contractor. Moreover, Ex.P13 shows that there were deductions towards provident fund and E.S.I. and also towards canteen. Therefore, the fixation of monthly income at Rs.8,317/- cannot be taken exception to.

10.The next contention of the appellant is about the multiplier. On this question, the appellant is right. The age of the deceased was 39 years. Therefore, the multiplier to be adopted was only 15. But the Tribunal wrongly applied multiplier of 16. Therefore, this portion of the award requires modification.

11.The award of Rs.1,00,000/- towards loss of consortium and Rs.10,000/- towards funeral expenses cannot be said to be of a higher order.

12.But the amount of Rs.4,00,000/- towards loss of love and affection at the rate of Rs.1,00,000/- each to the respondents 1 to 3 and Rs.50,000/- each to the respondents 4 and 5, appears to be on the higher side. Though the learned counsel for the appellant brought to our notice the decision of the Supreme Court in Vimal Kanwar and Others Vs. Kishore Dan and Others (2013(1) TN MAC 641 (SC)), where an award of Rs.2,00,000/- towards loss of love and affection was upheld, we are of the view that the said ratio cannot be applied to the case on hand. It is seen from the decision relied upon by the learned counsel for the respondents 1 to 5 that the deceased was an employee of the State Government and was aged about 28 years. His wife was aged about 24 years. Minor daughter was aged about 3 years. But in the case on hand, the deceased was aged about 39 years. The minor children are aged 3 and 6 years respectively and the deceased was a casual labour. We have already approved the addition of 50% towards future prospects, on the basis that there was possibility of absorption. Therefore, the award of Rs.1,00,000/- each to the respondents 1 to 3, in our view, can be reduced to Rs.75,000/- per head towards loss of love and affection and the award of Rs.50,000/- each to the respondents 4 and 5 can be reduced to Rs.37,500/- per head towards loss of love and affection. This will take the total to Rs.3,00,000/- under the head of loss of love and affection.

13.Therefore, in fine, the award would get modified into

> The amount of Rs.16,83,720/- for dependency (Rs.1,12,248/- x 15 = ), Rs.3,00,000/- towards loss of love and affection, Rs.1,00,000/- towards loss of consortium and Rs.10,000/- towards funeral expenses.

14.Accordingly, the Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

15.The award of the Tribunal is modified to the effect that the respondents 1 to 5 will be entitled to compensation in a sum of Rs.20,93,720/- along with interest as ordered by the Tribunal in the same proportion as ordered by the Tribunal.

16.The appellant insurance company is directed to deposit the reduced compensation amount along with interest, less the amount already deposited, within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the respondents 1, 4 and 5 are permitted to withdraw the reduced compensation amount apportioned to their respective shares along with interest. Insofar as the compensation payable to the minor claimants 2 and 3/respondents 2 and 3, the same shall be deposited in any one of the Nationalised Banks in fixed deposit till they attain majority. The first claimant/mother of minor claimants 2 and 3 is permitted to withdraw the interest accrued on the minors' deposit once in three months directly from the bank.

Sd/-
Asst.Registrar (CO)
/true copy/

Sub Asst. Registrar

mmi

To

The Subordinate Judge,
(Motor Accidents Claims Tribunal)
Tiruttani.

+1 cc to M/s. Anand and Suryas, Advocates, sr.30278
+1 cc to M/s. R.Sivakumar, Advocate, sr.30098.

copy to:

The Section Officer,
VR Section,
High Court, (records if any)
Madras.

C.M.A.No.1158 of 2015

ala(co)
kra(29/07)