IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 21-08-2015

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

AND

THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

C.M.A.No.1743 OF 2015

United India Insurance Co.Ltd.,
Motor Third Party Cell Claims Office,
No.38, Anna Salai, 3rd Floor,
Chennai-2. ... Appellant/2nd Respondent

-vs-

1.P.Nalini ... 1st Respondent/1st Petitioner
2.M.Sagunthala ... 2nd Respondent/2nd Petitioner
3.K.Muthu ... 3rd Respondent/3rd Petitioner
4.P.Dhanushiya, ... 4th Respondent/4th Petitioner
Minor, represented by her grandmother
and next friend N.Madhu Mathi.

5.M/s.Arjun Associates (P) Ltd. ... Respondent/1st Respondent

Appeal u/s.173 of MV Act 1988 against the award, dated 05.07.2014, made in MCOP No.5372 of 2004, on the file of the Motor Accident Claims Tribunal-cum-II Small Causes Court, Chennai.

For appellant : Mr.S.Arunkumar
For respondents 1 to 4: Mr.A.A.Venkatesan

JUDGMENT
(Judgment of the Court was delivered by S.Manikumar,J.)

Being aggrieved by the quantum of compensation awarded by the Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai, at Rs.11,40,000/- with interest at 7.5% per annum, from the date of claim till the deposit, to the wife, parents and the child of the deceased, the insurer/United India Insurance Company Limited has filed this appeal. Therefore, there is no necessity to advert to the findings, regarding the negligence on the driver of the offending vehicle/lorry bearing registration No.PY-01-N-8787, insured with the appellant/insurer.

2. Before the Tribunal, the legal representatives of the deceased have contended that at the time of accident i.e., on 09.01.2004, their bread-winner was aged 23 years and earned Rs.6,000/- per month. To support their contention, regarding avocation, oral evidence alone has been adduced. However, having regard to the status of the deceased being a married person, survived by his wife, parents and child, the Claims Tribunal has fixed the monthly income of the deceased at Rs.5,000/- per month, and taking note of the decision of the Hon'ble Apex Court in Rajesh and Others v. Rajbir Singh and Others, reported in 2013 (2) TN MAC 55 (SC), added up 50% of the income towards future prospects and, thus, determined the monthly income for the purpose of computing the loss of dependency as Rs.7,500/- per month. Though the respondents/claimants contended that at the time of accident the deceased was aged 22 years, taking note of the entry in Ex.P-2 Post-mortem Certificate, the Tribunal fixed his age as 25 years. Following the case of Sarala Varma and Others v. Delhi Transport Corporation and Another, reported in 2009 (2) TNMAC 1 (SC), the Tribunal has deducted 1/3 towards personal and living expenses of the deceased, and applying '18' multiplier, arrived at the loss of contribution to the family at Rs.10,80,000/- (Rs.5000x12x18).

3. In addition to the above, the Claims Tribunal has awarded a sum of Rs.15,000/- towards funeral expenses. The child, at the time of death of the deceased father, was aged less than one year. A sum of Rs.25,000/- alone has been awarded for loss of love and affection, which does not represent just compensation. Parents of the deceased are awarded a sum of Rs.10,000/- each. Altogether, under the head 'love and affection', the Tribunal has awarded only Rs.45,000/-. As the mother of the minor child also died, there was no award under the head 'consortium'. Finally, the Tribunal has awarded a total compensation of Rs.11,40,000/- with interest at the rate of 7.5% per annum from the date of claim till the date of deposit. Out of the said compensation, mother of the deceased has been granted compensation of Rs.3,00,000/-; father of the deceased, a sum of Rs.40,000/-; and the minor dauther of the deceased, a sum of Rs.8,00,000/-.

4. Though Mr.S.Arunkumar, learned counsel for the appellant/insurance company has questioned the award of the Tribunal as excessive and contended that the Claims Tribunal has erred in fixing the monthly income of the deceased at Rs.5,000/- and accordingly awarded a higher compensation of Rs.11,40,000/- without any basis, this Court is not inclined to accept his submissions, for the reason that for providing food, shelter, health and to meet out the expenses for basic amenities, one would require a reasonable income. The accident has occurred on 09.01.2004. However, a sum of Rs.5,000/-, taken as monthly income for computing the loss of contribution to family, comprising of wife (since deceased), parents and a minor daughter, can, by no stretch of imagination, be said to be grossly excessive, warranting

interference.

5. As observed earlier, the compensation awarded under the head 'loss of love and affecftion' to the child at Rs.25,000/-, is very low. The Tribunal has not awarded any reasonable compensation under the head 'transportation and conventional damages to clothes and articles'. The methodology adopted by the Claims Tribunal for compouting the loss of contribution to the family cannot be said to be manifestly excessive, and, at the same time, the quantum of compensation awarded by the Tribunal cannot also be said to be a manna from heaven to the child, as she has lost both her parents.

6. For the reasons stated supra, this Civil Miscellaneous Appeal is dismissed. Consequently, the appeallant/insurance company is directed to deposit the entire compensation amount, awarded by the Tribunal, with proportionate interest and costs to the credit of M.C.O.P.No.5372 of 2004 on he file of the Motor Accident Claims Tribunal-cum-II Small Causes Court, Chennai, within a period of six weeks from the date of receipt of a copy of this order. Out of the said deposit, mother of the deceased is permitted to withdraw Rs.3,00,000/- with proportionate interest and the father of the deceased is permitted to withdraw Rs.40,000/- with proportionate interest. Costs awarded is permitted to be withdrawn by them. Rest of the compensation amount with proportionate interest is directed to be deposited in a fixed deposit in any nationalised bank, nearby to the residence of the respondents, until the minor child attains majority. No amount shall be permitted to be withdrawn, except the interest accrued on the share of the minor, once in three months. No costs. Consequently, the connected M.P.No.1 of 2015 is closed.

-sd/-
Assistant Registrar

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Sub-Assistant Registrar

dixit

To

The Motor Accident Claims Tribunal-
cum-II Small Causes Court, Chennai.

+1 CC to Mr.A.A.Venkatesan, Advocate SR.NO. 44410/2015
+1 CC to Mr.S.ArunKumar, Advocate SR.NO. 44792/2015

C.M.A.No.1743/2015

CA (CO)
sd : 08/10/2015