IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 19.08.2015

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

and
THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM, J.,

C.M.A. No.1912 of 2015
and M.P.No.1 of 2015

M/s.Royal Sundaram Alliance Insurance Co. Ltd.,
No.1, Club House Road,
Anna Salai, 2nd Floor,
Chennai - 600 002.

..Appellant/2nd Respondents

Vs.

1. M.Yasmin
2. Abdulsamad
3. Kathunbeevi
4. A.Narayanan .. Respondents

Prayer: Appealfiled under Section 173 of the Motor Vehicles Act, 1988 against the Decree and Judgment passed by the Motor Accidents Claims Tribunal (III Additional District Court), Tiruvallur at Poonamallee, in MCOP No.705 of 2012 dated 26.02.2014.

For Appellant : Mrs.Harini
for Mr.N.Vijayaraghavan
For Respondents : Mr.Varadha Kamaraj (for R1 to R3)

JUDGMENT
(Order of the Court was made by S.MANIKUMAR, J.)

We have heard the learned counsel for the appellant on the merits of the challenge in this appeal.

2. Quantum of compensation of Rs.14,99,999/-, with interest, at the rate of 7.5% per annum, awarded by the Motor Accidents Claims Tribunal (III Additional District Court), Tiruvallur at Poonamallee, vide order dated 26.02.2014 in MCOP No.705 of 2012, to the legal representatives viz., wife and parents of the deceased, is the only challenge in this appeal, on the grounds inter alia, that the claims tribunal has erred in determining the monthly income of the deceased, as Rs.10,000/- for the purpose of computing the loss of dependency,

without any basis and more particularly, after rejecting the salary certificate Ex.P4, issued by PW3, employer, describing the same, as not genuine.

3. We have heard the learned counsel for the caveator also, who prayed to sustain the same.

4. In the accident, which occurred on 26.05.2012, Mohamad Basha, aged about 27 years, died leaving behind his legal representatives, viz., wife and parents. At the time of filing of the claim petition, wife was aged 20 years. Parents were aged about 62 years and 50 years, respectively. Deceased was claimed to be an employee of Sultan Bed Mart, a manufacturer of Sofa and Bed, and stated to have earned Rs.20,000/- per month. However, during the course of trial, wife Yasmin has deposed that her husband Mohamad Basha was a manufacturer of Bed and Pillows in Bismi Industries at Alapakkam and earned Rs.20,000/- per month. Company owner Sultan, examined as PW3 has deposed that the deceased worked under him, as manufacturer of Sofa and pillows and he was paid Rs.15,000/- per month. He has also deposed that the company, was registered. Ex.P4, is the salary certificate given by Bismi Industries, certifying that late Mohamad Basha was working as a Sofa and Bed manufacturer in Bismi Industries, and that his monthly salary was Rs.15,000/-.

5. However, contradicting the quantum of income stated supra, PW3 has deposed that the deceased was paid Rs.10,000/-. Finding that PW3, has contradicted his own statement, the claims tribunal, held that Ex.P4, issued by PW3, is not genuine. Nevertheless, the claims tribunal fixed the monthly income of the deceased as Rs.10,000/-. After deducting 1/3 towards the personal and living expenses of the deceased and by adopting '18' multiplier, the claims tribunal has arrived at the loss of contribution to the family as Rs.14,39,199/-.

6. As rightly contended by the learned counsel for the appellant, that once, the claims tribunal has declined to accept Ex.P4, salary certificate holding it, as not genuine, then the tribunal ought not to have fixed the monthly income as Rs.10,000/- without any basis. However, the fact remains that the deceased, is survived by wife and aged parents. He would have engaged in some avocation, to eke out his livelihood and support the family.

7. In Syed Sadiq, etc. Vs. Divisional Manager, United India Insurance Co. Ltd., reported in 2014 (1) TN MAC 459 (SC), the insured was a vegetable vendor. The accident occurred on 14.08.2008 in Karnataka. Claim petition was filed for compensation. On the aspect of determination of income of a vegetable vendor, taking note of the decision in Ramchandrappa vs. Manager, Royal Sundaram Alliance Co. Limited, reported in 2011 (13) SCC 236 and taking note of the present

state of economy and rising price in agricultural products, the Hon'ble Apex Court accepted the testimony of the respondents therein that the deceased was a vegetable vendor and capable of earning Rs.6,500/- per month. In the reported case, the deceased was aged 24 years, at the time of accident.

8. Thus, applying the judgments of the Hon'ble Apex Court in Ramchandrappa vs. Manager, Royal Sundaram Alliance Co. Limited, reported in 2011 (13) SCC 236, Syed Sadiq, etc. Vs. Divisional Manager, United India Insurance Co. Ltd., reported in 2014 (1) TN MAC 459 (SC), coupled with the testimony of PW1, wife Yashmin, this Court is of the view that the monthly income of the deceased Mohamad Basha determined at Rs.10,000/-, is slightly on the higher side. Nevertheless, even if income is reduced to a sizeable amount, considering the age of the deceased viz., 27 years and the decisions in Santosh Devi Vs. National Insurance Co. Limited, reported in 2012 (2) TN MAC 1 (SC), Rajesh & Others Vs. Rajbir Singh & Others, reported in 2013 (2) TN MAC 55 (SC) and Munna Lal Jain & Another Vs. Vipin Kumar Sharma & Others, reported in (2015) 6 SCC 347, it could be seen that the claims tribunal has failed to consider as to whether just compensation is awarded considering the future prospects of the deceased, who was aged just 27 years, at the time of accident and stated to have worked in a Sofa and Bed manufacturing company. Thus, even if the income is reduced to Rs.6,500/- and if 50% is added up, towards future prospects, then the actual income to be taken into consideration for the purpose of computing the loss of dependency would be around Rs.10,000/-. Therefore, in the light of the above decision and the principles of law to be taken into consideration for the purpose of fixing the monthly income of the deceased, we are not inclined to reduce the actual income taken into consideration.

9. As per Ex.P2, postmortem certificate, the age of the deceased was 27 years. Tribunal has applied '18' multiplier for the purpose of computing the loss of contribution to the family. As per Sarla Verma Vs. Delhi Transport Corporation, reported in 2009 (2) TN MAC 1 (SC), multiplier for the age group of persons between 26 and 30 is '17' and therefore, a reworking has to be done. Accordingly, loss of dependency works out to Rs.13,59,864/- (Rs.6,666/- x 12 x 17). Thus, there would be a reduction in the quantum of compensation under the head 'loss of dependency'.

10. Combining both transportation and funeral expenses, incurred by the legal representatives of the deceased, the tribunal has awarded Rs.15,000/- and it appears to be less. In Rajesh & Others Vs. Rajbir Singh & Others, reported in 2013 (2) TN MAC 55 (SC), the Hon'ble Apex Court has awarded Rs.25,000/- towards funeral expenses. Following the said decision, a sum of Rs.25,000/- is awarded towards funeral expenses. Cost of transportation is reduced to Rs.10,000/-.

11. Wife is stated to be aged 20 years. She has lost the love and affection, companionship, etc., of the deceased due to his sudden demise. 'Consortium' as per the Best v. Samuel Fox reported in 1952 AC 716 means, "Duty owned by a wife to her husband and vice versa, companionship, love and affection, comfort, mutual services, sexual intercourse, etc.. The Hon'ble Supreme Court, in Rajesh's case (cited supra) has awarded consortium of Rs.1,00,000/- to a young widow. Following the same, this Court deems is fit to award a sum of Rs.1,00,000/- under the head consortium against sum of Rs.20,000/- awarded by the tribunal. No award under the head 'damages to clothes and articles'. Hence, a sum of Rs.2,000/- is awarded towards the same.

12. At the time of death, the age of the parents were 62 and 50 respectively. Sum of Rs.25,000/- awarded under the head loss of love and affection is too low. If compensation under the head 'loss of love and affection' is enhanced to Rs.1,00,000/- i.e., Rs.50,000/- each, then the quantum of compensation works out to Rs.15,96,864/-. But the total compensation claimed by the respondents is Rs.15,00,000/-. Mr.Varadha Kamaraj, learned counsel for the respondents/claimants, fairly submitted that he would be satisfied if the compensation of the Rs.15,00,000/-, claimed be granted.

13. In the above said circumstances, we are of the view that there is no manifest illegality in awarding the total compensation of Rs.14,99,999/- (One Rupee less than the sum claimed i.e., Rs.15,00,000/-). It is rounded off to Rs.15,00,000/-. Award passed by the Motor Accidents Claims Tribunal (III Additional District Court), Tiruvallur at Poonamallee, in MCOP No.705 of 2012 dated 26.02.2014, is rounded off to Rs.15,00,000/- and the apportionment is sustained, as per the order of the tribunal. The Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

14. Consequent to the dismissal of the appeal, the appellant-Insurance company, is directed to deposit the entire award amount, with interest at the rate of 7.5% per annum from the date of claim till the date of realisation and costs, less the amount already deposited, to the credit of MCOP No.705 of 2012 dated 26.02.2014 on the file of the Motor Accidents Claims Tribunal (III Additional District Court), Tiruvallur at Poonamallee, within a period of six weeks from the date of receipt of a copy of this order.

It is open to the respondents/claimants to seek for disbursement of the award amount, by making necessary applications.

-Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

To

1. Motor Accidents Claims Tribunal,
   III Additional District Judge,
   Tiruvallur at Poonamallee

2. The Section Officer,
   VR Section,
   High Court, Madras.

+1 cc to Mr.K.Varadhakamaraj,Advocate(sr.44573)

C.M.A. No.1912 of 2015

ctk(co)
cp 07/10/2015