IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.09.2015

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE M.VENUGOPAL

C.M.A.No.2025 of 2015
M.P.No.1 of 2015

M/s.United India Insurance Co. Ltd.,
Divisional Manager, T.K.M. Complex,
1st Floor, 46-51, Katpadi Road,
Vellore. .. Appellant /2nd Respondent

versus

1. K.O.Masiha Khatoon
2. A.Balkis Begum
3. Minor T.M.Misbah Marium
4. Minor T.Muhammed Kashif .. Respondents 1 to 4/Claimants

5. S.Loganathan .. 5th Respondent/1st Respondent
(Minors are represented by their mother, 1st respondent)

Prayer: Civil Miscellaneous Appeal is filed, against the judgment and decree in M.C.O.P.No.232 of 2012, dated 18.12.2014, on the file of the Motor Accident Claims Tribunal, Ist Additional District and Sessions Court, Vellore.

For Appellant : Mr.S.Arun Kumar

For Respondents 1 to 4: Mr.M.Sathishkumar

JUDGMENT

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

Challenge in the Civil Miscellaneous Appeal, by M/s.United India Insurance Co. Ltd., is to the quantum of compensation of Rs.21,29,050/- with interest at the 7.5% from the date of claim, till deposit, awarded to the legal representatives of the deceased, stated to have worked as Staff Supervisor, in M/s.Oriental Shoe, Fabrik, K.H.Group, R.N.Palayam, Vellore, aged about 36 years, at the time of accident, with a monthly salary of Rs.8,167/-. Except the above, there is no other challenge.

2. In the accident, which occurred on 17.07.2011, T.Masood Ahmed, died. Wife, aged about 26 years, mother, aged 52 years, minor daughter, aged 8 years, and minor son, aged about 3 years, have filed M.C.O.P.No.232 of 2012, on the file of the Principal District Judge, Vellore, claiming compensation of Rs.30,00,000/-.

3. Having regard to the oral testimony of wife, duly supported by PW.3, Assistant in Human Resources, Oriental Shoe Company, for whom, Ex.P18, Authorisation Letter has been given. Ex.P19 - Salary Certificate, has been marked. In Ex.P19 - Salary Certificate, income of the deceased has been shown as Rs.8,167/- and on that basis, the Tribunal has fixed the monthly income as Rs.8,167/-. On the basis of the entry in Ex.P2 - Post-mortem Certificate, the Tribunal, by fixing the age of the deceased, at the time of accident, as 36 years, and by further observing that there is possibility of earning, for another 20 years, decided to add up 50% towards future prospects. Accordingly, worked out the future prospects as Rs.4,084/-. But instead of adding up the income drawn, at the time of accident, with 50% towards future prospects, the Tribunal, by deducting 1/3rd from the income drawn, at the time of accident, arrived at Rs.6,125/- and thereafter, added up Rs.4,084/-, towards future prospects and proposed to compute the loss of dependency. After quantifying the amount, under various heads, the Tribunal has awarded a total compensation of Rs.21,29,048/-, with interest at the rate of 7.5% per annum, from the date of claim, till deposit, as hereunder:

Loss of dependency	: Rs.19,60,128/-
Loss of love and affection	: Rs. 50,000/-
Loss of consortium	: Rs. 50,000/-
Medical Expenses	: Rs. 5,420/-
Pain and Suffering	: Rs. 50,000/-
Transportation	: Rs. 2,500/-
Damages to clothes and articles	: Rs. 1,000/-
Funeral Expenses	: Rs. 10,000/-
Total	: Rs.21,29,048/-

Rounded of to Rs.21,29,050/-.

4. The main grievance of the appellant-Insurance Company, is that the Tribunal has failed to note that the deceased was employed in a private company and that therefore, the Tribunal ought not to have added up 50% towards future prospects, which is contrary to the decision of the Hon'ble Supreme Court in Reshma Kumar and others v. Madan Mohan and another reported in 2013 (1) TNMAC 481. Without prejudice to the above, learned counsel for the appellant-Insurance Company submitted that even taking it for granted that the deceased had some future prospects, addition should have been only 30% and not 50%. It

is also his submission that after adding up the component future prospects, the Tribunal should have deducted 1/4th. According to him, the method of computing the dependency compensation is wrong.

5. Another contention advanced by the learned counsel for the appellant-Insurance Company is that for the age of 36 years, the proper multiplier that have adopted by the Tribunal for computing the loss of contribution is '15' and not '16'. It is also his further contention that when the Claimants/respondents have been compensated under the head, loss of love and affection and consortium, further compensation of Rs.50,000/-, under the head, mental agony, is not only erroneous, but superfluous. For the abovesaid reasons, the appellant-Insurance Company has sought for deduction of the quantum of compensation.

6. Mr.M.Sathish Kumar, learned counsel appearing for the respondents/claimants made submissions to sustain the award amount.

Heard the learned counsel appearing for the parties and perused the materials available on record.

7. To support the avocation and monthly income, besides oral testimony, the Claimants/respondents have examined PW.3, Assistant HR in Oriental Shoe Company. He has deposed that the deceased as supervisor, earned Rs.8,167/-. Ex.P18 - Authorisation Letter and Ex.P19 - Salary Certificate, have been marked. After considering the oral and documentary evidence, this Court is of the view that there is no material irregularity or illegality in fixing the monthly income, earned by the deceased, at the time of accident. There is no quarrel over the determination of age of the deceased as 36, as per the entry in Ex.P2 - Post-Mortem Certificate, which can also be justified, as per the decisions in Fakeerappa v. Karnataka Cement Pipe Factory reported in 2004 (4) LW 20 and The Managing Director, Tamilnadu State Transport Corporation, Madurai v. Mary [2005 (5) CTC 515].

8. The question to be considered, is whether, the deceased would have earned more income, in future, had he been alive and whether, the Claims Tribunal was right in adding up 50% under the head, future prospects, for the purpose of computing the loss of contribution to the family. Accident has occurred in Vellore District. Judicial notice can be taken that in the said district, leather garments, fabrics, shoes, and other articles, are manunfactured. There is lot of business, dealing with leather. At the time of accident, the deceased was stated to be a supervisor. He is survived by wife, mother and two children. Leather business, is not diminishing. Having regard to the nature of business and employment of the deceased, a supervisor, it could be reasonably be presumed that

had he been alive, certainly, there would have been better or higher prospects in the said business and would have earned a higher income and consequently, contributed to the family.

9. Though Mr.S.Arun Kumar, learned counsel for the appellant submitted that the Tribunal ought not to have added 50% towards future prospects, this Court, is not inclined to accept the said contention, on the principles of just compensation. A sum of Rs.4,064/-, as future prospects, cannot be said to be wholly unjustified. However, as rightly pointed out, the Tribunal has committed a mistake in the method of calculation, while arriving at the loss of dependency. As per the age of the deceased, 36 years, the Tribunal should have applied 15 multiplier. The income should have been fixed, by adding up 50% and thereafter, deducting $1/4^{th}$ towards personal and living expenses, compensation should have been arrived at Rs.16,53,750/- (Rs.12,250/- x 12 x 15 x ¾).

10. Quantum of compensation of Rs.50,000/- awarded to the wife, stated to be aged about 26 years, is less. Thus, the same requires enhancement. Following the decision in Rajkumar v. Ajay Kumar reported in 2011 (1) SCC 343, the award under the loss of consortium is enhanced to Rs.1,00,000/-. Two minor children and mother have lost the love and affection of the deceased. A sum of Rs.50,000/- under the head, loss of love and affection, is less. Considering the age of the children and mother, we deem it fit to award compensation of Rs.2,00,000/-, under the head, loss of love and affection.

11. Compensation of Rs.50,000/- awarded under the head, mental agony, is liable to be deducted, when the respondents/claimants have been awarded compensation under the head, consortium and loss of love and affection, respectively. Thus, there will be a reduction of Rs.50,000/- from the total compensation. Quantum of Compensation awarded under the head, transportation, damages to clothes and articles and funeral expenses is less. On the aspect of quantum of compensation, under the head, funeral expenses, the Supreme Court in Rajesh and others Vs. Rajbir Singh and others reported in 2013(3) CTC 883, held as follows:

> "21. We may also take judicial notice of the fact that the Tribunals have been quite frugal with regard to award of compensation under the head 'Funeral Expenses'. The 'Price Index', it is a fact has gone up in that regard also. The head 'Funeral Expenses' does not mean the fee paid in the crematorium or fee paid for the use of space in the cemetery. There are many other expenses in connection with funeral and, if the deceased is follower of any particular religion, there are several religious practices and conventions pursuant to death in a family. All those are quite

expensive. Therefore, we are of the view that it will be just, fair and equitable, under the head of 'Funeral Expenses', in the absence of evidence to the contrary for higher expenses, to award at least an amount of Rs.25,000/-."

Thus, following the said decision, we deem it fit to award Rs.25,000/- under the head, funeral expenses.

12. Accident had occurred on 17.07.2011. Although a sum of Rs.25,000/- is awarded under the head, funeral expenses, which may broadly include the expenses incurred in connection with funeral, still a separate award can be made, for transportation of the corpse to the residence and for engaging any vehicle to the burial ground or crematorium. As observed by the Apex Court, funeral expenses include expenses incurred for conducting many ceremonies, purchase of clothes and other things, depending upon the religion and practice.

13. To bring the corpse to the residence of the deceased and thereafter, to take it to the burial ground or crematorium, reasonable expense, would have been incurred by the respondents/claimants. Rs.2,500/-, awarded under the head, transportation, is less and therefore, we propose to award Rs.10,000/-, under the head, transportation. Medical expenses of Rs.5,420/- is duly supported by Ex.P16 - Medical Bills. A sum of Rs.1,000/- to damages to clothes, awarded by the Claims Tribunal, is less and therefore, it is enhanced to Rs.2,000/-.

14. Children have lost the support, moral guidance, personal estate of the deceased and so also the mother. The Tribunal has not awarded any compensation under the head, loss of estate, which does not always represent the property. Loss of estate can also be the guidance of personal attributes, knowledge, experience of the deceased, which are disseminated and lost in his absence. Thus, we deem it fit to award Rs.30,000/- under the head loss of estate. Now the compensation is worked out to Rs.20,26,170/-, as hereunder:

Loss of dependency	: Rs.16,53,750/-
Loss of love and affection	: Rs. 2,00,000/-
Loss of consortium	: Rs. 1,00,000/-
Medical expenses	: Rs. 5,420/-
Transportation	: Rs. 10,000/-
Loss of estate	: Rs. 30,000/-
Damages to clothes and articles	: Rs. 2,000/-
Funeral Expenses	: Rs. 25,000/-
Total	: Rs.20,26,170/-

15. In view of the re-working of the compensation, as stated supra, there will be a reduction in the quantum of compensation to the extent of Rs.1,02,880/-. Apportionment of the Tribunal is sustained. In the result, the Civil Miscellaneous Appeal is partly allowed. The appellant-Insurance Company is directed to deposit the compensation amount, now determined by this Court, with accrued interest and costs, to the credit of M.C.O.P.No.232 of 2012, dated 18.12.2014, on the file of the Motor Accident Claims Tribunal, Ist Additional District and Sessions Court, Vellore, within a period of six weeks from the date of receipt of a copy of this order. The share of the minors shall be deposited in any of the Nationalised Banks in fixed deposit, under the reinvestment scheme initially for a period of three years. The interest accruing on the share of the minors shall be paid to the guardian once in three months, till they attain majority. On such deposit being made, except the minors, the respondents/claimants are permitted to withdraw the same, by making necessary application before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

skm

To

The Motor Accident Claims Tribunal
Ist Additional District and Sessions Court,
Vellore.

+1 cc to Mr.S.Arunkumar, Advocate, sr.50405
+1 cc to Mr.M.Sathishkumar, Advocate, sr.50207

C.M.A.No.2025 of 2015

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