IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 28-10-2015

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

AND

THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

C.M.A.No.2077 OF 2015

The Oriental Insurance Co.Ltd.,
Old No.15, New No.16, Prakasam Salai,
2nd Floor, Broadway,
Chennai-108 ... Appellant/2nd Respondent

-vs-

1.S.Chandra
2.V.Swaminathan ...Petitioners 1 & 2
3.V.Sekar ...Respondents/1st Respondent

Appeal filed Under Section 173 of the Motor Vehicles Act 1988 against the award, dated 16.02.2015, made in MCOP No.7799 of 2013, on the file of the Motor Accident Claims Tribunal-cum-[II Court of Small Causes], Chennai.

For appellant : Mr.N.Vijayaraghavan
For respondents 1 & 2 : Mr.A.A.Venkatesan

JUDGMENT

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

Being aggrieved by the quantum of compensation of Rs.1,01,45,442/- with interest at the rate of 7.5% per annum from the date of claim till deposit, awarded to the legal representatives of the deceased, Oriental Insurance Company Limited has filed the present appeal. Out of the said compensation, the Tribunal apportioned a sum of Rs.51,45,442/- to first respondent/mother and Rs.50,00,000/- to second respondent/father, respectively.

2. Inviting the attention of this Court to the variation in the miscellaneous component of the income of the deceased S.Shiyamsunder, deduction in the professional tax, income tax and other heads and the oral evidence of the representative of the employer of the deceased that at the time

of accident, the last drawn salary of the deceased was only Rs.62,558/- per month, Mr.N.Vijayaraghavan, learned counsel for the appellant-insurance company, submitted that the Claims Tribunal has erred in fixing the monthly income of the deceased as Rs.76,658/-, which is on the higher side. He further submitted that the Claims Tribunal has erred in adding 50% of the income of the deceased, under the head future prospects, when the legal representatives of the deceased, have not proved permanent employment. Challenge is restricted only to the above aspect.

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

4. Before the Claims Tribunal, the legal representatives of the deceased S.Shiyamsunder have adduced evidence, stating, that, at the time of accident, the deceased was working as an I.T.Analyst, Grade-II, in Tata Consultancy Services Limited. After perusing Ex.P-10, the Claims Tribunal has recorded that the deceased had completed B.E.Degree in ECE at MNM Jain Engineering College in First Class with 70%. Considering Exs.P-12 and P-13, the Tribunal has noticed that he had completed Computer Course in NIIT. Ex.P-14 is the appointment letter, issued by Verizon Data Services India Private Limited. Exs.P-15, P-17, P-18 and P-20 are the Salary Increment details; Exs.P-16 and P-19 are the Promotion and Salary Increment details; Exs.P-8 and P-9 are the SSLC and HSC Certificates of the deceased; Exs.P-10 and P-11 are the Certificates relating to B.E.Degree.

5. P.W.3, Manager, HR, in Tata Consultancy Services, has deposed that the last drawn salary of the deceased was Rs.62,558/-. He has further deposed that the deceased served in Tata Consultancy Services Limited, for more than one year, he would have had his chances of going abroad. It is also his evidence that depending upon the potential of the employee, there are possibilities of increment in the salary and promotion. Upon perusal of the gross income of the deceased mentioned in Ex.P-39, Pay Slips, and considering the evidence of P.W.3, Manager, HR, Tata Consultancy Services Limited, the Claims Tribunal has fixed the monthly income of the deceased as Rs.76,658/-. The Claims Tribunal has arrived at the annual income of the deceased as Rs.9,19,896/- (Rs.76658/- x 12). Following the decision in Vimal Kanwar and Others v. Kishore Dan and Others, reported in 2013 ACJ 1441, the Tribunal has deducted 20% towards income tax and arrived at the annual oncome of the deceased as Rs.7,85,916.80 ps., which has been rounded off to Rs.7,85,917/-. Following the judgment of the Hon'ble Supreme Court in Rajesh and Others v. Rajbir Singh and Others, reported in 2013 (2) TN MAC 55 (SC), and having regard to the age of the deceased being less than 40 years, the Tribunal has added 50% of

the said income under the head 'future prospects', and, thus, arrived at the annual income of the deceased as Rs.11,78,875.50 ps., for the purpose of computing loss of contribution to the family. Thereafter, by deducting 50% of the amount towards the personal and living expenses, multiplied the same, with '17' multiplier, and, thus, arrived at the loss of dependency as Rs.1,00,20,441.75 (Rs.11,78,875.50/2 = 589437.75x17). In addition to the above, the Claims Tribunal has awarded Rs.25,000/- under the head 'funeral expenses'; and Rs.50,000/- each, under the head 'loss of love and affection', to the parents. The Claims Tribunal has awarded the total compenastion of Rs.1,01,45,442/-, out of which, mother/first respondent is apportioned Rs.51,45,442/- and father/second respondent Rs.50,00,000/-.

6. From the perusal of the Pay Slips of the deceased, it could be seen that the deceased S.Shiyamsunder was permanently employed in Tata Consultancy Services Limited, as an I.T.Analyst, Grade-II. Besides the Basic Salary of Rs.14,500/-, the deceased was also eligible for Conveyance Taxable, Conveyance Non-Taxable, House Rent Allowance, Sundry Medical, Variable Allowance, Leave Travel Allowance and Personal Allowance. He has also made contributions to Provident Fund, paid Professional Tax and Income Tax. Contributions have also been made to Health Insurance Scheme and Mediclaim Premium. There was also a Loan amount.

7. Going through the material on record and in particular Ex.P-39, Pay Slips, it could be deduced that depending upon the performance of the deceased, the miscellaneous component of the salary varied from month to month. Almost all the other heads of salary, basic salary, leave travel allowance etc. Personal allowance and other savings are similar. From the material on record, it could further be deduced that the deceased had been receiving conveyance of Rs.800/-, Sundry Medical expenses of Rs.1250/- and leave travel allowance of Rs.1208/-, totalling to Rs.3258/-, per month. The variation in the monthly salary is due to change in the amount received under the head 'miscellaneous', which depends upon the quarterly performance. As per the Pay Slip in June,2012, the Gross Income of the deceased was Rs.62,558/-, which did not have any amount, under the head 'miscellaneous'. That is why, when P.W.3, Manager, HR, Tata Consultancy Services Limted, has deposed that the last drawn salary of the deceased was Rs.62558/-, the miscellaneous amounts awarded between September,2011 and May,2012, are as follows :

September,2011	Rs.217.74
November,2011	Rs.6,974
February,2012	Rs.14,100
May,2012	Rs.14,100
Total	Rs.35,391.74

8. As there is variation in the miscellaneous amount for the above said period, we deem it fit to take between September,2011, and May,2012, the average of the miscellaneous amounts, which works out to Rs.8,848/-. Adding the average miscellaneous amount of Rs.8,848/- to the gross monthly income of Rs.62,558/-, the total works out to Rs.71,406/-. From the pay slips, it could be deduced that the sum of Rs.3,258/- has been deducted, the details of which, have been furnished in the foregoing paragraphs. Now, after deducting a sum of Rs.3,258/-, the net income for the purpose of computing the loss of contribution to the family is Rs.68,148/- (71406-3258). The Tribunal has deducted 20% of the income towards income tax. There is no dispute over the same. Thus, after deducting 20% (equivalent to Rs.13,630/-), the income arrived at is, Rs.54,518/-.

9. Though Mr.N.Vijayaraghavan, learned counsel for the appellant/insurance company, contended that the Claims Tribunal has erred in adding 50% of the income under the head 'future prospects' for computing the loss of dependency, in the light of the documents, produced by the legal representatives of the deceased, from schooling till death, and having regard to the academic career and pursuit of the deceased, with a gainful employment of earning more than Rs.70,000/- per month, at a very young age of 26 years in a reputed software company, namely, Tata Consultancy Services Limited, we are not inclined to accept the same. From the oral and documentary evidence adduced by the legal representatives of the deceased, it can safely be concluded that the deceased had a permanent job, and, as per the version of P.W.3, Manager, HR, Tata Consultancy Services Limited, had the deceased been alive and served for more than one year in the company, he would have had his chances of going abroad, and earned more income, and promotion as well. But, for the untimely demise, the legal representatives/parents of the deceased have not only lost the chances of seeing their son going abroad, and earned good future prospects. Determination of monthly income by the Tribunal, though is slightly on the higher side, it is now modified. Addition of 50% under the head 'future prospects' cannot be held to be erroneous, in the light

of the decisions of the Hon'ble Supreme Court in Santhosh Devi v. National Insurance Co.Ltd., reported in 2012 AIR SCW 2892, and, Rajesh and Others v. Rajbir Singh and Others, reported in 2013 (9) SCC 54.

10. Adding 50% of the income under the head 'future prospects', the income works out to Rs.81,777/- (Rs.54518 + 27259). The deceased being a bachelor, as per the decision of the Hon'ble Apex Court in Sarla Verma v. Delhi Transport Corporation, reported in 2009 (2) TN MAC 1 (SC), 50% of the income has to be deducted towards the personal and living expenses. After deduction, the income is Rs.40,889/-. Multiplier applicable for the age group of persons between 26 and 30 years is, '17'. Thus, applying the said multiplier, the pecuniary loss to the legal representatives of the deceased is arrived at Rs.83,41,356/- (Rs.40889x12x17). Sum of Rs.1,00,000/-, awarded under the head 'loss of love and affection', is sustained. Funeral and Transport expenses of Rs.25,000/- remains intact. Thus, the total compensation payable to the legal representatives of the deceased is Rs.84,66,356/-. Award of the Claims Tribunal is Rs.1,01,45,442/-. Now, in the light of the above reworking, there shall be a reduction of compensation of Rs.16,79,086/-.

11. Appeal, filed by the insurance company, is partly allowed, with the above reduction, in compensation. Appellant/insurance company is directed to deposit Rs.84,66,356/- along with interest and costs to the credit of MCOP No.7799 of 2013, on the file of the Motor Accident Claims Tribunal-cum-II Court of Small Causes, Chennai, less the statutory deposit, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, first respondent/mother is permitted to withdraw Rs.42,66,356/- and second respondent/father Rs.42,00,000/-, by making necessary application before the Claims Tribunal. No costs. Consequently, the connected M.P.No.1 of 2015 is closed.

Sd/-
Assistant Registrar(CS-V)

True Copy

Sub Assistant Registrar

To

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

+1cc to Mr.N.Vijayaraghavan, Advcoate Sr.59470
+1cc to MR.A.A.Venkatesan, Advocate Sr.58275

C.M.A.No.2077/2015

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