IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 14.09.2015

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE G. CHOCKALINGAM

C.M.A. No.2140 of 2015
and
M.P.No.1 of 2015

New India Assurance Company Limited,
Aristo Complex,
Opposite to State Bank of India,
Mahe - 573 310. ... Appellant/3rd Respondent

Vs.

1.K.P.Balan
2.K.Reema
3.T.M.Muhammad Ashraf
4.K.T.Pushparajan ... Respondents/Petitioners & Respondents 1 & 2

(3rd and 4th respondents sex ex parte in the Lower Court. Hence, notice to them are dispensed with)

Prayer: Appeal under Section 173 of the Motor Vehicles Act, 1988, against the Decree and Judgment passed by the Motor Accidents Claims Tribunal (Sub Judge), Mahe, in M.A.C.T.O.P.No.21 of 2014 dated 08.04.2015.

For Appellant : Mr.R.Sivakumar

JUDGMENT

S.MANIKUMAR, J.,

Quantum of compensation of Rs.18,37,250/- with interest @ 7.5% per annum, from the date of petition till the date of deposit, awarded to the claimants/parents in MCOP No.21 of 2014 dated 08.04.2015 on the file of the learned Sub Judge, Motor Accidents Claims Tribunal, Mahe, is the only challenge, in this appeal.

2.Appeal has been filed with the delay of 37 days. At the time of hearing of M.P.No.1 of 2015 filed for condonation, the learned counsel for the appellant submitted that the Claims Tribunal has erred in fixing the monthly income of the deceased, aged about 19 years, as Rs.10,000/- per month and further added up 50% towards the future prospects, for the purpose of computing the loss of dependency to the respondents/parents.

3.It is the case of the respondents that on 14.02.2014, when the deceased Amal Balan, aged about 19 years, was riding a motor cycle, bearing Registration No.KL-18M-705 with his mother as the pillion rider, a lorry, bearing registration No.KL-11G-1522, insured with New India Assurance Company, the appellant herein, driven in a rash and negligent manner, dashed against the motor cycle, causing injuries, to the rider, who died on the way to hospital.

4.According to the respondents/parents, at the time of accident, the deceased was studying I year B.Sc., (Computer Science) in Sree Narayana College, Vadakara. To prove that he was undergoing B.Sc., course, the respondents/claimants have marked Ex.P.5-11.06.2014- Certificate issued by Sree Narayana College, Vadakara. Though before the Claims Tribunal, the appellant Insurance Company, has contended that a sum of Rs.15,000/- per month alone should be taken into account, as per the Second Schedule to Section 163-A of the Motor Vehicles Act, for the purpose of deciding loss of dependency, based on the decision of the Hon'ble Supreme Court in V.Mekala v. M.Malathi and another reported in 2014 ACJ 1441 = 2011 (11) SCC 178, the Claims Tribunal fixed the monthly income of the deceased as Rs.10,000/-, and on the basis of the same Judgment, added up, a sum of Rs.5,000/-, i.e., 50% of the notional income, towards future prospects, for computing the loss of dependency. Thereafter, applying Smt. Sarla Verma & Ors. Vs. Delhi Transport Corporation and another, reported in 2009 (2) TN MAC 1 (SC), and the deceased, being a bachelor, the Claims Tribunal has deducted 50% towards the personal and living expenses of the deceased and awarded a sum of Rs.18,37,250/-, as apportioned hereunder:

Loss of dependency	:Rs.16,20,000/-
Loss of estate	:Rs. 10,000/-
Loss of love and affection @ Rs.25,000/- each to the petitioners 1 and 2	:Rs. 50,000/-
Medical expenses (as per Ex.P6-Medical Bills (Series) 44Nos	:Rs. 1,47,246/-
Transportation & Funeral expenses	:Rs. 10,000/-
Total	:Rs.18,37,246/-

5.Though Mr.R.Sivakumar, learned counsel for the appellant contended that the decision of the Hon'ble Supreme Court in V.Mekala v. M.Malathi and another reported in 2014 ACJ 1441 = 2011 (11) SCC 178, relied on by the Claims Tribunal, pertains to a injury case and therefore, inapplicable to the facts of this case, this Court is not inclined to accept the said contention, for the reason that whether it is an injury or fatal case, what is required to be considered, is the monthly income of the victim, for the purpose of computing the loss of dependency to the bereaved family. In V.Mekala's case, after considering a catena of decisions, the Hon'ble Supreme Court, at Para 19 held as follows:

> "19.Therefore, in the light of the principles laid down in the aforesaid case, it would be just and proper for this Court, and keeping in mind her past results, to take Rs.10,000/- as her monthly notional income for computation of just and reasonable compensation under the head of loss of income. Further, the High Court has failed to take into consideration the future prospects of income based on the principles laid down by this Court in catena of cases referred to supra. Therefore, the appellant is justified in seeking for re-enhancement under this head as well and we hold that the claimant- appellant is entitled to 50% increase under this head as per the principle laid down by this Court in the case of Santosh Devi (supra). The relevant paragraph reads as under:

13.In Sarla Verma's case (supra), another two Judge Bench considered various factors relevant for determining the compensation payable in cases involving motor accidents, noticed apparent divergence in the views expressed by this Court in different cases, referred to large number of precedents including the judgments in U.P. SRTC v. Trilok Chandra (1996) 4 SCC 362, Nance v. British Columbia Electric Railway Company Ltd. 1951 AC 601, Davies v. Powell Duffryn Associated Collieries Ltd. 1942 AC 601 and made an attempt to limit the exercise of discretion by the Tribunals and the High Courts in the matter of award of compensation by laying down straight jacket formula under different headings, some of which are enumerated below:

(i)Addition to income for future prospects In Susamma Thomas this Court increased the income by nearly 100%, in Sarla Dixit the income was increased only by 50% and in Abati Bezbaruah the income was increased by a mere 7%. In view of the imponderables and uncertainties, we are in favour of adopting as a rule of thumb, an addition of 50% of actual salary to the actual salary income of the deceased towards future prospects, where the deceased had a permanent job and was below 40 years. (Where the annual income is in the taxable range, the words "actual salary" should be read as "actual salary less tax"). The addition should be only 30% if the age of the deceased was 40 to 50 years. There should be no addition, where the age of the deceased is more than 50 years. Though the evidence may indicate a different percentage of increase, it is necessary to standardize the addition to avoid different yardsticks being applied or different methods of calculation being adopted. Where the deceased was self-employed or was on a fixed salary (without provision for annual increments, etc.), the courts will usually take only the actual income at the time of death. A departure therefrom should be made only in rare and exceptional cases involving special circumstances. Therefore, taking both the aspects into account, the total amount of compensation under this head is calculated as Rs.22,68,000/- [([pic]10,000/-x 70/100 + 10,000 x 70/100 x 50/100) x 12 x 18]”

6.Thus, the Hon'ble Supreme Court in V.Mekala's case, while fixing the monthly income of IX Std student, aged about 16 years, as Rs.10,000/- and taking note of the decision in Santhosh Devi v. National Insurance Company Limited and others reported in 2012 (2) TNMAC 1 (SC), added up 50% under the head, future prospects and thus, computed the loss of earning.

7.In the case on hand, at the time of accident, the deceased was aged about 19 years, studying I year B.Sc., (Computer Science). Application of V.Mekala's case by the Claims Tribunal, for the purpose of computing the loss of dependency, for fixing the monthly income as Rs.10,000/- and further adding up 50% towards future prospects, cannot be said to be manifestly illegal, warranting interference.

8.Quantum of compensation awarded to the parents, under the head of loss of love and affection at Rs.50,000/- is less. Combining both transportation and funeral expenses, incurred by the legal representatives of the deceased, the Claims Tribunal has awarded Rs.10,000/- 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. At this juncture, we take on record, what the Hon'ble Supreme Court has said in Rajesh's case, as regards funeral expenses, at paragraph No.21, which is reproduced hereunder:

> “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/-."

Medical expenses of the deceased is duly supported by Ex.P.6- Medical Bills (Series) (44 Nos). There is no merit, in this appeal warranting interference.

In the result, the Civil Miscellaneous Appeal is dismissed. The appellant-Insurance Company is directed to deposit the entire award amount with proportionate accrued interest and costs, if not already deposited, to the credit of M.A.C.T.O.P.No.21 of 2014 on the file of the learned Sub Judge, Motor Accidents Claims Tribunal, Mahe, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the respondents/claimants are permitted to withdraw the same, by making necessary applications before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

mps

To

1. The Motor Accidents Claims Tribunal
(Sub Judge), Mahe.

+1cc to Mr.R.ShivaKumar, Advocate, S.R.No.50677

C.M.A. No.2140 of 2015
and
M.P.No.1 of 2015

TEJ(CO)
CA(15/10/2015)