IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 15.09.2015

CORAM :

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

C.M.A. No.2193 of 2015
and
M.P.No.1 of 2015

The Branch Manager,
M/s. Oriental Insurance Co.Ltd.,
No.73/B-1, Salai
Lakshmi Complex, 4th Floor
Thillainagar,
Trichy - 18. ...Appellant/2nd Respondent

Vs.

1. Mrs. B. Vannamala Devi
2. Minor Priya Dharshini
3. Minor Yogavarshini
4. Mrs. C. Amsavalli
5. Mr. K. Sivananthan ...Respondents/Petitioners

Prayer: Appeal under Section 173 of the Motor Vehicles Act, 1988 against the Decree and Judgment passed by the Motor Accidents Claims Tribunal (Principal District Judge), Perambalur, in MCOP No. 211 of 2013 dated 09.12.2014.

For Appellant : Mr. J. Chandran

For Respondents : Mr. V. Raghupathi for R1 to R4
R5 - Given up

JUDGMENT

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

Being aggrieved by the judgment and decree made in MCOP No. 211 of 2013 dated 09.12.2014, on the file of the Motor Accidents Claims Tribunal (Principal District Judge), Perambalur, awarding a sum of Rs.15,83,000/- compensation with interest at the rate of 7.5% from the date of claim, till deposit, to the legal representatives of the deceased, the present appeal is filed.

2. Mr. J. Chandran, learned counsel for M/s. Oriental Insurance Company Limited, the appellant herein, assailed the correctness of the Award on the only ground that the quantum of compensation awarded to the legal representatives/ claimants is excessive. As the argument is confined only to the determination of monthly income and consequently the computation of loss of dependency, this Court deems it fit to advert to the same.

3. The deceased was stated to be a conductor in Tamil Nadu State Transport Corporation (Kumbakonam) Ltd., Thuvakudi Depot. The respondents 1 to 4/ claimants have contended that at the time of accident, i.e., on 21.03.2013, as a Conductor, he earned Rs.14,000/- per month, besides, daily batta of Rs.100/- and collection batta of Rs.1.85, per Rs.100/-. However, PW-2, the Superintendent of Tiruchirappalli Division, Tamil Nadu State Transport Corporation Limited, has deposed that the deceased as a temporary staff was paid on the basis of the actual days worked. Upon perusal of Ex.C1, dated 17.02.2014, the service particulars of the deceased Balasubramanian, issued by the Assistant Manager (Personnel and Administration), the Claims Tribunal has observed that the deceased Balasubramanian, had worked for 50 days and was paid Rs.229/- per day. Ex.C5 series, the trip sheets, were also taken note of, by the Claims Tribunal, for computing the number of days worked by the deceased as a Conductor. In so far as the claim of daily batta, the Claims Tribunal has taken note of Ex.C3, a copy of the G.O. (D) No.41 Transport (C1) Department dated 16.03.2007 the norms for recasting of staff, Ex.C4 Copy of the G.O. (D) No.93 Transport (C1) Department dated 13.10.2010 for revision of norms for technical categories, Ex.C2, copies of attendance extract.

4. In Latha and Ors. vs. K. Purushothaman & Ors., reported in 2013 (2) TN MAC 874, this Court has considered the meaning of 'Batta' and the assessment for fixing the monthly income. Adding up Rs.120/- daily batta, to the wages of Rs.229/- per day, and rounding off the same to Rs.350/- per day, the Claims Tribunal has determined that the deceased earned a monthly income of Rs.10,500/. The Tribunal has added up 50% of the said income towards future prospects, and by fixing the income as Rs.15,750/- per month, computed the loss of dependency to the family. Admittedly, there are 4 dependants including 2 minor children aged about 13 years and 7 years, at the time of accident. The deceased was aged 39 years. Thus, after deducting 1/3rd towards the personal and living expenses of the deceased and applying 15 multiplier, applicable to the age group of 35 - 40, in terms of the decision in Sarla Verma & Ors. vs. Delhi Transport Corporation & anr., reported in 2009 (2) TN MAC 1 (SC) and after deducting 30% towards income tax, the Claims Tribunal has arrived at Rs.14,88,312/- towards Loss of Dependency. Though, at the time of accident, wife of the deceased was stated to be 36 years, the Claims Tribunal has awarded only Rs.30,000/- towards Loss of Consortium. Towards loss of Love and Affection to the minor children, aged about 13 and 7 years respectively, and mother, the Claims Tribunal has awarded Rs.40,000/- only, at the rate of Rs.10,000/- each. A sum of Rs.5000/- has been awarded under the head Transport Expenses and Rs.10,000/- for Loss of Estate and a further sum of Rs.10,000/- towards Funeral Expenses. Altogether, the Claims Tribunal has awarded a compensation of Rs.15,83,312/- rounded off to Rs.15,83,000/-, with interest, at the rate of 7.5% per annum from the date of claim till deposit.

5. Going through the judgement, it is apparent that the quantum of compensation awarded under the head of loss of consortium and loss of love and affection, funeral expenses, are below the standards fixed by the Apex Court. Though Mr. J. Chandran, learned counsel for the appellant Insurance company has assailed the correctness of the quantum of compensation with reference to the method adopted by the Claims Tribunal, that future prospects should not have been added, this Court is not inclined to accept the said contentions. Accident has occurred on 21.03.2013. Had the deceased been alive, there would have been chances for regularisation. There are provisions relating to confirmation of permanent status. Four dependants have to be provided food, shelter etc., with a reasonable income. Considering the cost of living, inflation, price index in 2013,

sum of Rs.15,750/- fixed as monthly income for the purpose of computing the loss of dependency, cannot be stated to be on the higher side, warranting interference. The compensation awarded under the other heads are also low. The award and the apportionment are sustained, as per the order of the tribunal. Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

6. 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.211 of 2013 dated 09.12.2014 on the file of the Motor Accidents Claims Tribunal (Principal District Court), Perambalur, within a period of six weeks from the date of receipt of a copy of this order. The sum apportioned towards the share of the minors/ respondents 2 and 3 is directed to be invested in any one of the Nationalised Banks under reinvestment scheme, proximate to the residence of the mother/respondent No.1 and renewable thereafter, pending disposal of the appeal. Interest accrued on the deposit of the shares apportioned to the minors is permitted to be withdrawn by the mother/respondent No.1, once in three months. It is open to the respondents 1 and 4/ the major claimants to seek for disbursement of the award amount, by making necessary applications.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

avr

To

1.Motor Accidents Claims Tribunal,
Principal District Judge,
Perambalur.

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

C.M.A. No.2193 of 2015
and
M.P.No.1 of 2015

PPA (CO)
PSI (19.11.2015)