IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.10.2015

CORAM:

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

C.M.A.No.2285 of 2015
& M.P.No.1 of 2015

The Cholamandalam MS General Insurance Co. Ltd.,
Chennai. .. Appellant/2nd Respondent

.. Vs ..

1. R.A.Selvam @ Arokkaswamy
2. A.Kuzthaitarasu
3. R.Jayaraman .. Respondents/Petitioner/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the M.V.Act, 1988, against the judgment and decree passed in M.C.O.P.No.4940 of 2013, dated 12.01.2015, on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

For Appellant : Mr.M.B.Raghavan

JUDGMENT

(Judgment of this Court was made by S.Manikumar, J.)

Being aggrieved by the quantum of compensation of Rs.15,21,000/- with interest, at the rate of 7.5% per annum, awarded to the legal representatives of the deceased, from the date of claim, till deposit, the appellant-Insurance Company, has filed the present appeal, contending inter-alia that the Claims Tribunal has erred in fixing the monthly income of the deceased as Rs.8,000/-, without any basis. It is the further contention that neither the employer was examined nor Pay Slip of the deceased was filed. Addition of 50% towards future prospects, has been questioned on the grounds that the deceased was not permenantly employed in any stable job and in this context, attention of this Court was invited to the decisions of the Apex Court in National Insurance Co. Ltd., v. Pushpa [SLP(C)No.8058 of 2014, dated 31.10.2013] and Shashikala v. Gangalakshmamma reported in 2015 (3) MLJ 373 (Decided on 13.03.2015), wherein, a reference has been made to a Larger Bench of the Hon'ble Supreme Court, on the issue relating to the addition of 50% towards future prospects. That apart, compensation of Rs.2,00,000/- towards love and affection, assailed on the ground that it is excessive. As the challenge to the award, is restricted only to the quantum of compensation, there is no need to advert tgo the aspect of negligence and liability.

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

2. PW.1, Mother of the deceased, has stated that at the time of accident, i.e., 05.05.2013, her son was aged 21 years. Upon perusal of Ex.P5 – Pan Card and Ex.P6 – Diploma Transfer Certificate, the Claims Tribunal has noticed the Date of Birth of the deceased as 11.08.1991 and having regard to the date of accident, the Claims Tribunal has fixed the age of the deceased as 21 years. On the aspect of avocation and income, PW.1, has deposed that at the time of accident, the deceased was working as a Lab Assistant in Rajalakshmi Institute of Technology, working on Contract basis, with Maxwell Management Consultants, Chennai and was earning Rs.10,000/- per month.

3. Upon perusal of Ex.P6 – Diploma Transfer Certificate, the Claims Tribunal has noted that the deceased has completed Diploma in Automobile Engineering at Thai Moogambigai Polytechnic College. Ex.P8 is the Appointment Letter, dated 02.09.2012, issued by Maxwell Management Consultants, wherein, income of the deceased has been mentioned as Rs.8,415/- per month. Though the respondents/claimants, have not filed any Employment ID or Pay Slip of the deceased, having regard to the abovesaid documents, the Claims Tribunal has fixed the monthly income of the deceased as Rs.8,000/-, for the purpose of the computing the loss of dependency to the family and thereafter, placing reliance on a decision of the Apex Court in Rajesh v. Rajbir Singh reported in 2013 (2) TNMAC 55, added 50% of the monthly income, ie. Rs.4,000/- and thus, fixed the monthly income as Rs.12,000/- (Rs.8,000 + Rs.4,000/-), for the purpose of computing the loss of dependency.

4. For the purpose of applying the multiplier, the Claims Tribunal has considered the decisions in Sarla Verma v. Delhi Transport Corporation reported in 2009 (5) LW 561, Amrit Bhanu Shali v. National Insurance Company Ltd., reported in 2012 (2) TNMAC 321 and M.Mansoor and another v. United India Insurance Co. Ltd., reported in 2013 (2) TNMAC 481 (SC) and accordingly, applied '18' multiplier for the purpose of computing the loss of dependency. The deceased being the Bachelor, the Claims Tribunal, has deducted Rs.6,000/- towards personal and living expenses of the deceased. Thus, the Claims Tribunal has arrived at the loss of dependency at Rs.12,96,000/- (Rs.6,000/- x 12 x 18).

5. In addition to the above, the Claims Tribunal has awarded Rs.25,000/- towards Funeral Expenses. For the parents, aged about 47 and 39 years, it has awarded Rs.2,00,000/- under the head, loss of love and affection. Altogether, the Claims

Tribunal has awarded Rs.15,21,000/- with interest at the rate of 7.5% per annum, from the date of claim, till deposit.

6. Though Mr.M.B.Raghavan, learned counsel for the appellant-Insurance Company assailed the quantum of compensation, on the groundds, stated supra, this Court is not inclined to accept the said contentions, for the reason that the respondents/claimants have produced Ex.P5 - Pan Card, Ex.P6 - Diploma Transfer Certificate, Ex.P7 - Certificate of Achievement, Ex.P8 - Appointment Order, Ex.P9 - Pass Book and Ex.P10 - LIC Policy, to support the contention that the deceased was duly employed. The deceased was a Diploma Holder in Automobile Engineering from Thai Moogambigai Polytechnic College.

7. In Sri Ramachandrappa Vs. The Manager, Royal Sundaram Alliance Insurance Company Ltd., reported in 2011 (2) TNMAC 190 SC, a sum of Rs.4,500/- has been claimed as monthly wages for the deceased, stated to be a coolie. The claims tribunal has taken Rs.3,000/- for the purpose of computing the loss of contribution to the family. However, when the matter was taken up on appeal, the Hon'ble Supreme Court having regard to the wages of a labourer, during the relevant period (2004 - between Rs.100 to Rs.150/- per day) found fault with the tribunal for reducing the income from Rs.4,500/- to Rs.3,000/- and determined the same at Rs.4,500/-.

8. In Syed Sadiq etc. Vs. Division Manager, United India Insurance Company Limited reported in 2014 (1) TN MAC 459, the Hon'ble Supreme Court, has determined Rs.6,500/- as the monthly income of a vegetable vendor, who sustained injuries in the accident, which occurred in February 2008.

9. Though the learned counsel for the appellant-Insurance Company mainly contended that the employer was not examined the educational qualification of the deceased and other supporting documents to prove avocation, cannot be ignored, on the sole ground that the Pay Slip was perused before the Claims Tribunal.

10. On the aspect of reference to the Larger Bench, relating to addition of future prospects for self-employed or persons without fixed wages, this Court in C.M.A.Nos.1065 and 1066 of 2015, dated 08.09.2015, has discussed as follows:

> "29. Though it is the case of Mr.J.Chandran, learned counsel for the appellant-Insurance Company that in case of employees in unorganised sector or non-salaried or persons, without any permanent job, addition of 30% under the head, "future prospects", with the income drawn, at the time of death, should not be made, for computation, this Court is not inclined to accept the said submission that for the reason that the expression "future prospects" should

not be confined only to the prospects of the deceased in the career, progress or upgradation of position, in which, he was engaged, prior to death, but we are of the considered view that the expression "future prospects" should also be extended to the likelihood of increase in wages, salary or other emoluments and thereby, increase in income, earned by either a skilled or semi-skilled person, considering the upward increase in cost price, inflation and such other factors.

30. Judicial notice can also be taken that the cost of essential commodities, labour, etc., have never remained static and it is always on the rise. Periodically electricity and water charges, on the increase. Consequent to the upward revision of fuel, cost of transportation has increased. To meet out the basic amenities, there would be an increase in the income. In relation to employment, education plays an important role. If there are more qualified persons and less number of jobs, then there is a possibility of fixing lesser salary, in the case of unorganised sectors. However, there cannot be a thumb rule, that there would not be any change in income, forever."

11. That apart in a recent decision in Munna Lal Jain v. Vipin Kumar Sharma reported in 2015 (6) SCC 347, the deceased was a pandit and bachelor. He was aged 30 years. The accident occurred on 12.07.2008. Income at Rs.12,000/- per month, was determined by the High Court. Addition of 50% was made and thereafter, compensation has been quantified. Thus, in the recent judgment, a three Judges Bench of the Hon'ble Apex Court, has allowed addition of 50% under the head future prospects.

12. In the light of the discussion and decisions of the Apex Court and this Court, extracted supra and the gradual increase in the earning of an agriculturist or a vegetable vendor, as the case may be and having regard to the educational qualification of the deceased, this Court, is of the view that determination of monthly income and addition of 50% of the said income, under the head, future prospects, cannot be said to be manifestly illegal, warranting any interference.

13. Legal representatives of the deceased have lost the love and affection of their son, when he was just 21 years old. In Rajesh v. Rajbir Singh reported in 2013 (2) TNMAC 55, the Apex Court has awarded Rs.1,00,000/- each to the legal representatives of the deceased, towards loss of love and affection. Perusal of the award shows that there is no compensation towards transportation and damges to clothes and articles.

14. In the light of the discussions and decisions, the quantum of compensation awarded by the Tribunal, cannot be said to be excessive and does not warrant 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.C.O.P.No.4940 of 2013, dated 12.01.2015, on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai, within a period of four (4) weeks from the date of receipt of a copy of this order. On such deposit being made, the respondents/claimants are permitted to withdraw their respective shares, by making necessary application before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Asst.Registrar (CS II )

/true copy/

Sub Asst. Registrar

skm

To

The Motor Accidents Claims Tribunal
II Court of Small Causes, Chennai.

+1 cc to Mr.N.Vijayaraghavan, Advocate, sr.54168

C.M.A.No.2285 of 2015

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kra 03/11/2015