

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2015

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A. No.2589 of 2015
& M.P.No.1 of 2015

United India Insurance Co. Ltd.,
No.6, Railway Feeder Road,
Near LIC, Sulur-641 402.

... Appellant

Versus

1.Jothi @ Jothimani

2.Minor Nandhini

3.Minor Nandhiya

(minors are rep. by their Mother Guardian
and next friend Jothi @ Jothimani)

4.Palanisamy @ Palaniappan

5.Kanniammal

6.Raghuraman

7.Perumal

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 against the judgment and decree dated 29.11.2013 made in M.C.O.P.No.1026/2012 on the file of the Motor Accidents Claims Tribunal, (Sub Court), Tiruppur (M.C.O.P. No.100/2011 on the file of Sub Court, Perundurai).

For Appellant : Mr.T.Ravichandran

J U D G M E N T

The Civil Miscellaneous Appeal is directed against the correctness of the impugned award dated 29.11.2013 made in M.C.O.P.No.1026/2012 on the file of the Motor Accidents Claims Tribunal/Sub Court, Tiruppur awarding a sum of Rs.10,20,000/- with 7.5% interest per annum from 07.04.2011 to 29.11.2013.

2.Learned counsel appearing for the appellant/United India Insurance Company assailing the impugned award passed by the Tribunal in fixing the monthly income of the deceased at Rs.6,750/-, contended before this Court that in the absence of sufficient evidence with the documents, learned Tribunal ought not to have fixed Rs.6,750/- as notional income. In any event, it cannot be more than Rs.6,000/- as held by the Hon'ble Apex Court in the case of National Insurance Company Ltd. vs. Khimlibai reported in 2009 (5) CTC page 187. When that being the settled legal principle with regard to fixation of notional income of the deceased, learned Tribunal has gone beyond the ratio. Therefore, the award passed by the Tribunal, in awarding a huge and unacceptable amount of compensation of Rs.10,20,000/- is liable to be set aside. Contending further learned counsel appearing for the appellant would submit that the learned Tribunal has also committed yet another serious error in awarding a sum of Rs.50,000/- towards loss of love and affection, Rs.50,000/- towards loss of estate and Rs.20,000/- towards funeral expenses. Without any sufficient evidence, learned Tribunal has liberally granted the compensation, when the claimants did not deserve.

3.This Court finds no justification in the award. In paragraph 9 of the award, learned Tribunal has considered the evidence adduced by PW3/ Subramani, who has deposed that the deceased was working as a Powerloom weaver and was earning a sum of Rs.10,000/- as monthly income for a period of three years before his death. In addition thereto, Ex.P.8/last drawn salary of the deceased was also produced before the Tribunal. Therefore, the learned Tribunal, having no other option, fixed a sum of Rs.6,750/- as monthly income of the deceased. As per the principles laid down by the Hon'ble Apex Court in the case of Sarala Varma and others vs Delhi Transport Corporation and another reported in 2009 (2) TANMAC Volume 2 at Page 1, after arriving a sum of Rs.6,750/- as monthly income, $\frac{1}{4}$ th of the salary was deducted as stated above and applying multiplier 15 towards his personal expenses, since there were 5 family members of the deceased namely wife, 2 minor children, father and mother. Accordingly, it has arrived Rs.5,000/- as monthly income and thereby awarded a sum of Rs.9,00,000/- (5000 x 12 x 15), which, in my view, cannot be found fault with.

4.Further considering the fixation of Rs.50,000/- towards love and affection, Rs.50,000/- towards loss of estate and Rs.20,000/- towards funeral expenses and considering the fact that the deceased unfortunately died at the age of 36 leaving behind his wife, his two daughters at the age of 13 years and 11 years respectively, his father and mother and again considering

the vital fact that had the deceased not died in the accident, he would have lived for full span of his life and would have contributed substantially to his family, by applying the principles of just and reasonable compensation, this Court is not able to find any infirmity in fixing Rs.9,00,000/- towards loss of income, Rs.50,000/- towards loss of love and affection, Rs.50,000/- towards loss of estate and Rs.20,000/- towards funeral expenses. Therefore, the impugned award is upheld.

5.Learned counsel appearing for the appellant sought for four weeks time to deposit the balance amount. As submitted by the learned counsel for the appellant that since the appellant has deposited Rs.25,000/-, the balance amount is directed to be deposited within a period of four weeks from the date of receipt of a copy of this order. On such deposit, it is for the claimants to move a petition before the learned Tribunal for withdrawing of the said amount.

6.Accordingly, the Civil Miscellaneous Appeal fails and the same is dismissed. No costs. Consequently, Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vga

To

1.The Motor Accidents Claims Tribunal,
Sub Court, Tiruppur

2.The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.T.Ravichandran, Advocate, S.R.No.63237

C.M.A. No.2589 of 2015
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SVI (CO)
CA(04/05/2016)