IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2015

CORAM

THE HON'BLE MR. JUSTICE V.RAMASUBRAMANIAN
and
THE HON'BLE MR. JUSTICE T.MATHIVANAN

C.M.A. No.517 of 2015
and
M.P.Nos.1 and 2 of 2015

M/s.New India Assurance Co.Ltd.,
Thiruvottiyur Branch,
No.251, T.H. Road,
Thiruvottiyur, Chennai - 21. ...Appellant/2nd Respondent

vs

1.R.Vijaya
2.Minor R.Balaji
3.Minor R.Naveen Kumar
4.Sundari ...Respondents 1 to 4/Petitioners 1 to 4

5.A.Kasirajan ...5th Respondent/1st Respondent
(minor respondents 2 and 3 are rep. By their mother and next friend R1)

Appeal filed under section 173 of the Motor Vehicles Act, 1988 against the judgment and decree passed in M.C.O.P.No.2101 of 2012 on 25.04.2014 on the file of the Motor Accidents Claims Tribunal (II Judge, Court of Small Causes), Chennai.

For Appellant : Mr.J.Chandran

For Respondents : Mr.M.Swamikannu for R1 to R4
R5 - No appearance

JUDGMENT

(Judgment of the Court was delivered by V.RAMASUBRAMANIAN, J.)

This appeal by the insurance company arises out of the award of the Motor Accidents Claims Tribunal in M.C.O.P. No.2101 of 2012.

2.Heard Mr.J.Chandran, learned counsel appearing for the appellant and Mr.M.Swamikannu, learned counsel appearing for the respondents 1 to 4.

3.In a road traffic accident, that occurred on 17.02.2012, one Mr.G.Rajaram died, leaving behind his wife, two children and his mother. All of them joined together and filed a petition in M.C.O.P. No.2101 of 2012 on the file of the Motor Accidents Claims Tribunal, Chennai, claiming compensation in a sum of Rs.50 lakhs.

4.The Tribunal, by an award dated 25.04.2014, directed the insurance company to pay compensation in a sum of Rs.34,12,500/-. Aggrieved by the fixation of the said quantum, the insurance company is on appeal.

5.The fact that the deceased was aged about 39 years at the time of accident is borne out by Ex.P7 driving licence. As per Ex.P7 driving licence, the deceased was born on 15.05.1972. The accident occurred on 17.02.2012. Therefore, the Tribunal rightly applied the multiplier of 15.

6.In so far as the income of the deceased is concerned, the respondents produced Exs.P5, P8 and P9 to show that the deceased was the owner of three vehicles. According to the respondents, the deceased was letting out these vehicles on hire as a tourist taxi operator. He was also employed as a driver in respect of Swaraj Mazda van. Therefore, the Tribunal fixed that the deceased would have earned Rs.15,000/- per month.

7.Though it is contended by the learned counsel for the appellant insurance company that there was no proof to show that the deceased earned income by operating the vehicles as a tourist taxi operator, we cannot overlook the fact that as per Exs.P5, P8 and P9, the deceased was the owner of three vehicles. It is true that there was no indication as to whether he had permit or not. But assuming that the deceased was not running a tourist taxi service, the fact remains that he owned three vehicles, even while working as a driver. Therefore, the monthly income taken by the Tribunal at Rs.15,000/- cannot be said to be of a higher order.

8.Mr.J.Chandran, learned counsel for the appellant submitted that the addition of 50% towards future prospects was not proper. The learned counsel pointed out that all the vehicles were sold after the death of the deceased.

9.It is true that one vehicle was sold on 20.08.2012 and another vehicle was sold on 23.10.2013. But in the absence of any evidence to show that there was future prospects, the Tribunal could not have added 50%. Nevertheless, a total denial of something for future prospects cannot also be accepted. Therefore, we are of the view that fixing 30% towards future prospects would meet the ends of justice.

10.The award of Rs.25,000/- towards funeral expenses, Rs.1,00,000/- towards loss of consortium and Rs.1,00,000/- towards loss of love and affection cannot be said to be of a higher order. Therefore, these amounts cannot be interfered with.

11.But inso far as loss of expectation of life is concerned, the Tribunal has awarded Rs.1,00,000/-. Once an award is passed for future prospects, there is no question of awarding an amount for loss of expectation of life.

12.In Anjani Singh and Others Vs. Salauddin and Others (2014 (2) TN MAC 1 (SC)), the Supreme Court followed the principles laid down in Reshma Kumari and Others Vs. Madan Mohan and another (2013 1 TNMAC 483) and the ratio laid down in Smt.Sarla Verma and Others Vs. Delhi Transport Corporation and another (2009 5 LW 561) to come to the conclusion that the award of 50% for future prospects was correct. But that was a case where the deceased was working in the Air Force and he was aged 35 years. In respect of employments, fixation of future prospects of 50% may be correct. But where the deceased was said to have owned three vehicles without any proof to show that he was operating those vehicles for running tourist taxi business, the addition of 50% cannot be said to be correct. This is why we have reduced it to 30%. As a consequence, the award of Rs.1,00,000/- towards loss of expectation of life cannot be accepted.

13.In the light of the above, the order of the Tribunal is modified to the following effect:

(1)Taking into account the monthly income of the deceased at Rs.15,000/- together with an addition of 30% towards future prospects, the monthly income would work out to Rs.19,500/-. After deducting 1/4th of the amount towards personal expenses, the loss of income for the family is fixed at Rs.14,625/- per month. If the multiplier of 15 is applied, the amount comes to Rs.26,32,500/-.

(2).The award of Rs.25,000/- towards funeral expenses, the award of Rs.1,00,000/- towards loss of consortium and the award of Rs.1,50,000/- towards loss of love and affection are confirmed.

(3).The award of Rs.1,00,000/- towards loss of expectation of life is set aside.

Consequently the total amount of compensation payable would be Rs.29,07,500/- (Rs.26,32,500/- + Rs.25,000/- + Rs.1,00,000/- + Rs.1,50,000/- = Rs.29,07,500/-).

14.As a result, the Civil Miscellaneous Appeal is partly allowed. No costs. Consequently connected miscellaneous petitions are closed. The compensation awarded by the Tribunal is modified so as to entitle the respondents 1 to 4 to a total amount of Rs.29,07,500/- together with interest as ordered by the Tribunal. The apportionment among the respondents 1 to 4 shall also be as per the award of the Tribunal.

15.It is submitted by the learned counsel for the appellant that the entire compensation amount has been deposited along with interest. The respondents 1 and 4 are permitted to withdraw the compensation amount apportioned to their respective shares along with interest. Insofar as the compensation payable to the minor claimants 2 and 3/respondents 2 and 3, the same shall be deposited in any one of the Nationalised Banks in fixed deposit till they attain majority. The first claimant/mother of minor claimants 2 and 3 is permitted to withdraw the interest accrued on the minors' deposit once in three months directly from the bank. The appellant insurance company is permitted to withdraw the excess amount, if any.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The II Judge,
Court of Small Causes,
Chennai.

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

1 CC to Mr.M.Swamikannu, Advocate SR.No. 30111

1 CC to Mr.J.Chandran, Advocate SR.No. 30233

C.M.A.No.517 of 2015

CNR (CO)
PSI (08.07.2015)