IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 30.03.2015

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN

C.M.A. No. 590 of 2015
&
M.P. No. 1 of 2015

M/s. United India Insurance Co. Ltd.,
52, Katchery Road, AKT Complex,
Kallakurichi - 606 202. ..Appellant/ II Respondent

Vs.

1. Shobana Devi ...I Respondent/ I Petitioner
2. Minor S.M. Saram
(minor is rep. By his NF, Guardian and mother Shobana Devi)

3. P. Muthusamy
4. M. Selvi
5. K. Venkatesan
(R5 set exparte before MACT. Notice may be dispensed with). ..Respondents/ Petitioners

Prayer: Civil Miscellaneous Appeal filed u/s 173 of Motor Vehicles Act 1988 as against the judgment and decree dated 29.11.2011 passed in M.C.O.P. NO. 1351 of 2008 by the Motor Accidents Claims Tribunal (ADJ & Spl. Judge, EC Act), Salem.

For Appellant :: Mr.T. Ravichandran

For Respondents:: Mr.P. Jagadeesan

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred by the Insurance Company as against the award of Rs.9,11,000/- passed by the Motor Accidents Claims Tribunal (Additional District Judge and Special Judge for EC Act cases), Salem, in favour of respondents 1 to 4, for the death of one Muniraj, who is the husband of the 1st respondent, father of the 2nd respondent and son of respondents 3 and 4, aged about 29 years, an Auto Consultant, said to have been earning Rs.25,000/- per month, in the accident, which occurred on 17.02.2008.

2. Heard Mr.T. Ravichandran, learned counsel for the appellant and Mr.P. Jagadeesan, learned counsel for respondents 1 to 4.

3. The only question to be gone into is the quantum of compensation awarded by the Tribunal.

4. Though Mr.T. Ravichandran, learned counsel for the appellant would argue that the monthly income of the deceased fixed at Rs.6000/-, in respect of an accident, which occurred in the year 2008, is on the higher side, the said determination is in consonance with the judgment of the Honourable Apex Court rendered in Syed Sadiq etc. Vs. Divisional Manager, United India Insurance Company Limited reported in 2014 (1) TN MAC 459(SC), wherein, for a vegetable vendor, who sustained injuries in the accident, which took place in 2008, a sum of Rs.6500/- was taken as monthly income and after adding 50% towards "Future Prospects", considering his age, a sum of Rs.9750/- was determined as total monthly income. Therefore, this Court confirms the determination of monthly income of the deceased, in the case on hand, at Rs.6000/-. Since the deceased was aged about 29 years, 50% of monthly income has to be added towards "Future Prospects". In that event, the total monthly income would be

Montly Income	::	Rs.6000 /-
Add:		
50% towards "future prospects"	::	Rs.6000/- + 50% (Rs.6000/-)
Total monthly income	::	Rs.9000/-

Since the size of the family of the deceased is four, one-fourth deduction has to be made towards "Personal Expenses", instead of one-third, as done by the Tribunal. The multiplier, to be adopted, as per the age of the deceased, is 17 and applying the same, "Loss of Income" is calculated as hereunder:

Montly Contribution of the deceased to his family	::	Rs.9000/- (-) (¼ (Rs.9000/-)
	::	(Rs.9000/- (-) Rs.2250/-)
	::	Rs.6750/-
Annual Contribution	::	Rs.6750 x 12
Loss of Income	::	Rs.6750 x 12 x 17
	::	Rs.13,77,000/-

5. As far as other amounts are concerned, the Tribunal, mechanically, awarded Rs.50,000/- towards "Loss of Consortium" to the 1st respondent/wife. The 1st respondent was hardly aged about 25 years at the time of accident and the agony, both physiological and

psychological, which she has to undergo, at such a young age is unimaginable. That apart, being a widow, a stigma is cast upon her, which would also cause mental agony to her in social life. Therefore, following the judgment of the Honourable Apex Court in Rajesh and others v. Rajbir Singh and others reported in 2013 (2) TN MAC 55 (SC), a sum of Rs.1 lakh is awarded towards "Loss of Consortium".

6. The 2nd respondent/minor son was aged about 6 months, at the time of accident, and even before he could recognise his father's face, he lost his father in the tragic accident in question. Though love and affection, which the deceased would have showered on the minor as well as on his parents, and the care and guidance, which the deceased would have provided to the minor, had he been alive, of which the minor has been deprived of, cannot be compensated in terms of money, but, with a view to provide some sort of solace to the minor as well as to his parents, this Court awards a sum of Rs. 1 lakh towards "Loss of love and affection" to the minor son as well as to the parents of the deceased. The sum of Rs.5000/- awarded towards "Funeral Expenses" is too low and the same is enhanced to Rs.20,000/-. Since no amount was awarded towards "Transportation Expenses", a sum of Rs.5000/- is awarded under the said head. In all, a sum of Rs. 16,02,000/- , rounded off to Rs.16 lakhs is awarded as compensation. The rate of interest awarded by the Tribunal @ 7.5% per annum remains intact.

7. Though the appeal has been filed by the Insurance Company as against the award of the Tribunal, this Court has enhanced the compensation from Rs. 9,11,000/- to Rs.16,00,000/-, by invoking XLI Rule 33 CPC, by re-appreciating the evidence on record and applying the correct law, as on date, to the facts of the case, with a view to award just compensation to the family. What is to be awarded is just and reasonable compensation and therefore, this Court, even in the absence of appeal/cross-appeal by the claimants, has enhanced the compensation payable to the claimants.

8. The appellant Insurance Company is directed to deposit the entire amount, as per the modified award passed by this Court, after deducting the amount, if any, already deposited, with interest and costs, before the Tribunal, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, respondents 1, 3 and 4 are permitted to withdraw their respective shares, as per the apportionment of the Tribunal, within a period of one week thereafter. The share of the 2nd respondent/minor shall be re-invested by the Tribunal, in any one of the Nationalised Banks, in interest bearing Fixed Deposit, till he attains majority. The 1st respondent is permitted to

withdraw interest accruing on such deposit once in three months. The claimants shall pay additional court-fee for the enhanced amount, if any.

9. In the result, the Civil Miscellaneous Appeal is dismissed and the award passed by the Tribunal is enhanced to Rs.16 lakhs. No costs. Connected M.P. is closed.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

nv

To

The MACT (ADJ & Spl. Judge, EC Act), Salem.

1 cc to M/s. P. Jagadeesan, Adocate, Sr. 17716
1 cc to M/s.T. Ravichandran, Advocate, Sr. 17775

C.M.A. No. 590 of 2015

PA (CO)
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