

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.04.2015

CORAM :

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

CMA No.2374 of 2010
and M.P.No.1 of 2010

The Divisional Manager
The National Insurance Company Limited,
Vellore. ... Appellant / 2nd Respondent

vs.

1.K.Shamim
2.M.Kamal Batcha
3.K.Muneer Kamal
4.K.Ahmed Respondents / Petitioners

5.M.Mahadev 5th Respondent / 1st Respondent

6.M/s.Bright Master Engineering
Private Limited,
Chennai - 600 029. 6th Respondent / 3rd Respondent

7.The Divisional Manager,
The United India Insurance Company Limited,
Kadpadi Road,
Vellore ... 7th Respondent/4th Respondent

Prayer :- Civil Miscellaneous Appeal filed under Section 173 of
M.V. Act 1988 against the judgment and decree dated 29.11.2005 made
in MACTOP No.707 of 2004 on the file of the Motor Accident Claims
Tribunal, Tiruvannamalai.

For Appellant : Mr.S.Vadivel

For Respondents: Mr.S.Vediappan for
Mr.R.Karthikeyan
for R1 to R4
Mr.S.K.Krishnamurthy for R7

JUDGMENT

This appeal has been preferred by the insurance company against the award of Rs.13,67,000/- awarded by the tribunal for the death of one K.Muhammed Usuf, 24 years old, Sales Manager drawing a sum of Rs.15,000/- in a provisional store in Mumabi who died in the accident occurred on 21.07.2004.

2. Heard Mr.S.Vadivel, learned counsel appearing for the appellant and Mr.S.Vediappan, learned counsel appearing for the respondents 1 to 4.

3. Since the liability was already decided by this Court in CMA No.2534 of 2008 vide order dated 29.11.2005, the same has already attained finality. The only issue to be decided now is with regard to the quantum of compensation awarded by the tribunal.

4. It is seen that the accident occurred in the year 2004. The tribunal had determined the monthly income of the deceased at Rs.10,000/- per month based on Ex.P4, salary certificate. However, it is impossible for any person, that too working in a provisional store to draw a sum of Rs.10,000/- as salary per month. Therefore, the monthly salary determined by the tribunal at Rs.10,000/- is reduced to Rs.7,500/-. The tribunal rightly deducted 1/3rd towards personal expenses as the deceased was the only son who had the responsibility of getting married his two unmarried sisters. Therefore, the deduction of 1/3rd cannot be interfered with. Similarly, the tribunal rightly adopted multiplier 17 as per the age of the deceased while calculating the loss of income. Thus, after deducting 1/3rd towards personal expenses the monthly income of the deceased would be Rs.5000/- [Rs.7500 less 1/3rd] and adopting multiplier 17, the loss of income is determined as Rs.10,20,000/- [Rs.5000 x 12 x 17].

5. In so far as loss of love & affection to the respondents is concerned, the tribunal awarded only a sum of Rs.5,000/- which is very much on the lower side and hence this Court enhances the same to Rs.75,000/- Similarly, Rs.2,000/- awarded towards funeral expenses is also enhanced to Rs.5,000/-. Thus, the amount of Rs.13,67,000/- awarded by the tribunal is hereby reduced to Rs.11,00,000/-, and the break up is as follows -

(1) Loss of income	...	Rs.10,20,000/-
(2) Loss of love & affection	...	Rs. 75,000/-
(3) Funeral expenses	...	Rs. 5,000/-

Total	...	Rs.11,00,000/-
		=====

The rate of interest awarded by the tribunal at 7.5% shall remain unaltered.

6. Further, the tribunal rightly fixed the liability at 50 : 50 upon the appellant / National Insurance company as well as the 7th Respondent / United India Insurance Company and directed them to pay the compensation equally which cannot be interfered by this Court.

7. In the result, this Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

8. Since it is represented that the appellant as well as the 7th respondent have already deposited the entire compensation awarded, the tribunal is directed to pay the compensation awarded by this court alongwith interest to the respondents/claimants on the basis of ratio fixed by the tribunal from the amount already deposited, within one week from the date of receipt of the copy of this order. The excess amount available in the deposit alongwith proportionate interest, as per the order of this court is directed to be paid to the appellant as well as the 7th respondent, within one week from the date of receipt of the copy of this order.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

rgr

To

The District Judge,
Motor Accident Claims Tribunal,
Tiruvannamalai.

1 cc to Mr.R. Karthikeyan, Advocate, Sr. 23030
1 cc to Mr.S. Vadivel, Advocate, Sr. 23019
1 cc to Mr.S.K. Krishnamurthy, Advocate, Sr. 23292

CMA No.2374 of 2010

BR (CO)
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