

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2015

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THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

C.M.A. No. 1931 of 2012

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M.P. Nos. 1/2012 & 1/2013

M/s. United India Insurance Co. Ltd.,
rep. By its Branch Manager,
No. 178, 1st Floor, Dr. Nanjappa Road,
Coimbatore. ..Appellant/ 3rd Respondent

Vs.

1. S. Sudha
2. S. Vignesh
3. S. Deepak
4. S. Naveenkumar (minor)
5. Tmt. Anandammal
(4th respondent minor rep. By mother
and NF 1st respondent) ...Respondents/ Petitioners 1 to 5
and respondents 1 and 2

6. Mr.K. Palanisamy
7. Mr.P. Madhu ..Respondents

Prayer: Civil Miscellaneous Appeal as against the judgment and
decree dated 08.07.2011 passed in M.C.O.P. No. 11 of 2009 by the
Motor Accidents Claims Tribunal (Chief Judicial Magistrate),
Coimbatore.

For Appellant :: Mrs. Harini for
Mr.M.B. Gopalan

For Respondents :: Mr.N. Ishtiaq Ahmed for
R1 to R5
Mr.P. Thirunavukkarasu for R7

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. 11,58,424/- for the
death of one Kg. Sukumaran, aged about 60 years, retired Inspector

of Police, who was working as Security Officer in "Sri Krishna Sweets Private Limited", in the accident, which occurred on 21.04.2008, while he was riding his two-wheeler, which was hit by a tanker lorry, insured with the appellant Insurance Company.

2. Heard the learned counsel for the appellant, the learned counsel for respondents 1 to 5 and the learned counsel for the 7th respondent.

3. The only point in issue is the quantum of compensation awarded by the Tribunal.

4. According to the learned counsel for the appellant, the deceased is survived by his second wife, three children and an aged mother and when the second wife, the 1st respondent herein, is already getting pension from the Government, there is no question of including the said pension amount along with the monthly income of Rs.5000/-, stated to be earned by the deceased after his retirement. She would further state that no proof was produced in support of the employment of the deceased as Security Officer in "Sri Krishna Sweets Private Limited" and therefore, the monthly income determined by the Tribunal requires to be reduced.

5. However, the learned counsel for the claimants/respondents 1 to 5 would support the award of the Tribunal.

6. As far as the first contention of the learned counsel for the appellant, with regard to inclusion of pension amount while determining the monthly income of the deceased, is concerned, it has to be accepted. When the 1st respondent is already receiving the pension amount from the authorities, as rightly pointed out by the learned counsel for the appellant, the question of including the said amount along with the monthly income of the deceased does not arise and hence, the same is deleted.

7. As regards the second contention raised by the learned counsel for the appellant that no proof was produced with regard to the employment of the deceased and for payment of salary of Rs.5000/- is concerned, the claimants examined a witness, namely, P.W.3, an employee of "Sri Krishna Sweets Private Limited", to prove the employment of the deceased. As far as payment of salary of Rs.5000/- is concerned, it is highly unlikely that a retired Inspector of Police would serve in a Company, for less than Rs.5000/- per month. Therefore, while rejecting the second contention raised by the learned counsel for the appellant, Rs.5000/- is fixed as the monthly income of the deceased.

8. Since the size of the family of the deceased is five, one-fourth deduction has to be made towards "Personal Expenses" and "Monthly Contribution to the family" would be $(Rs.5000 - \frac{1}{4}(Rs.5000)) = Rs.3750/-$. According to the age of deceased, the appropriate multiplier, as rightly adopted by the Tribunal, is 8 and therefore, applying the same, "Loss of Income" is calculated thus:

Loss of Income :: Rs.3750 x 12 x 8
:: Rs.3,60,000/-.

9. As far as the amounts awarded under other heads are concerned, the sum of Rs.5000/- awarded towards "Funeral Expenses" is meagre and the same is enhanced to Rs.20,000/-. Under "Loss of Consortium", the Tribunal awarded only a sum of Rs.10,000/-, which is very low. Therefore, following the judgment of the Honourable Apex Court rendered in Rajesh and others V. Rajbir Singh and others reported in 2013 3 CTC 883, a sum of Rs.1 lakh is awarded under the said head. Similarly, the sum of Rs.12,000/- awarded towards "Loss of love and affection" to respondents 2 to 5 is enhanced to Rs.80,000/-. As no amount was awarded towards "Transportation Expenses" by the Tribunal, a sum of Rs.15,000/- is granted under that caption. Therefore, the total compensation payable to the claimants is as hereunder:

Loss of Income	::	Rs.3,60,000/-
Funeral Expenses	::	Rs. 20,000/-
Loss of Consortium	::	Rs.1,00,000/-
Loss of Love and Affection	::	Rs. 80,000/-
Transportation Expenses	::	Rs. 15,000/-
Total Compensation	::	Rs.5,75,000/-

Hence, the award of Rs.11,58,424/- granted by the Tribunal is reduced to Rs.5,75,000/-. The said amount shall carry the same rate of interest as awarded by the Tribunal, namely, 7.5% per annum and the apportionment shall be as ordered by the Tribunal. The Civil Miscellaneous Appeal is partly allowed. No costs. Connected M.Ps are closed.

10. Since the appellant Insurance Company has already deposited the entire amount, as awarded by the Tribunal, with interest and costs, respondents 1 to 3 and 5 are permitted to withdraw their respective shares, from the total compensation payable to them, as per the modified award passed by this Court, in the ratio fixed by the Tribunal, within a period of two weeks from the date of receipt of a copy of this order. The share of the 4th respondent, who is a minor, shall be deposited 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 Tribunal shall refund the balance amount to the Insurance Company.

Sd/-
Deputy Registrar (Judicial)

/true copy/

Sub Asst. Registrar

nv

To

1 The Motor Accident Claims Tribunal
(Chief Judicial Magistrate) Coimbatore.

2. The Section Officer
VR Section,
High Court, Madras

1 cc to Mr.M. Ishtiaq Ahmed, Advocate, sr. 9690
1 cc to Mr.B. gopalan, Advocate, Sr. 10135
1 cc to Mr. Thirunvukkarasu, Advocate, sr. 10289

C.M.A. No. 1931 of 2012

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