IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 09.01.2015

CORAM :

THE HON'BLE MR. JUSTICE V. DHANAPALAN
AND
THE HON'BLE MR. JUSTICE G. CHOCKALINGAM

C.M.A. No. 1912 of 2013

Joint Director of Health Services
Govt. Head Quarters Hospital
Villupuram Taluk
Villupuram District. ...Appellant/Respondent

-vs-

1. E. Lakshmi
   W/o. (Late) Elumalai
2. Sathish
   S/o. (Late) Elumalai
3. Rajeshkumar
   S/o. (Late) Elumalai
4. Ramesh
   S/o. (Late) Elumalai
5. Kaliammal
   W/o. Ramupillai

all are residing at
No: 47 Ladshmipuram
Vadapalani
Chennai - 600 026. ...Respondents/Claimants

Civil Miscellaneous Appeal against the judgment and decree dated 09.10.2012 passed by the Motor Accident Claims Tribunal (Small Causes Court) Chennai made in M.C.O.P. No: 48 of 2011.

For appellant : Mr.M. Venugopal
Special Govt. Pleader

For respondents : Mr. Terry Chellaraja
for Mr. V. Velu

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

J U D G M E N T

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

This Civil Miscellaneous Appeal is filed against the the judgment and decree dated 09.10.2012 passed by the Motor Accident Claims Tribunal (Small Causes Court) Chennai made in M.C..P. No: 48 of 2011.

2. As the negligence aspect is not in issue before this Court, the appellant has mainly raised the point of appeal on the ground that the quantum arrived at by the Tribunal is not in accordance with law.

3. The learned counsel for the appellant has focused his arguments on the point that the deceased was a partner of a Company called M/s. Essar Enterprises and as there is no loss of estate since the partnership business would continue, there cannot be any loss of income derived from that business and the compensation allowed on such an account cannot be allowed to stand.

4. On the other hand, the learned counsel appearing for the respondent claimant would contend that the income of the deceased has been arrived at based on the income tax returns filed for the Assessment Years 2007-2008, 2008-2009, 2009-2010 and 2010-2011 showing the income declared by M/s. Essar Enterprises. Therefore, according to the learned counsel, the Tribunal has rightly fixed the income and applied the proper computation method by including future prospects by taking into account the rulings of the Supreme Court in the case of Santosh Devi vs. National Insurance Company Ltd. and others reported in 2012 A.I.R. SCW 2892.

5. We have heard the learned counsel appearing for the parties and perused the records made available on record.

6. It is seen that on 24.10.2010 at about 14.30 hours, the deceased Elumalai was riding a two wheeler bearing Registration No: PY 01 A2 7128 from Pondicherry to Marakkanam at ECR Road, Arumanthai, opp. to Anumanthai Primary Health Services. When he was nearing the place opposite to Anumanthai Primary Health Services, a car bearing Registration No: TN 32 G 0158 coming from Marakkanam to Pondicherry which is being driven in high speed and in a rash and negligent manner dashed against his two wheeler due to which, the deceased died the same day. Therefore, the claim was made on the ground that the accident had occurred only due to the rash and negligent driving of the car, which has been insured with the appellant, and therefore the they are liable to pay the compensation.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

7. It was claimed by the claimants that the deceased was running an Auto Consultancy in the name of M/s. ESV Auto Consultancy and running a mechanical shop and earning a sum of Rs.2,50,000/- per annum. The 1st claimant is the wife of the deceased and the respondents 2,3 and 4 are the sons of the deceased and the 5th respondent is the mother of the deceased. One Mr. Sudakar and Mr. Ramalingam were examined as P.Ws.2 and 3 respectively. Before the Tribunal, the copy of the F.I.R. is marked as Ex.P.1; alteration report is marked a Ex.P.2, the Post Mortem report is marked as Ex.P.3; legal heir certificate is marked as Ex.P.4; Income Tax returns were marked as Ex.P.5 and the Partnership Deed is marked as Ex.P.6. The respondent has also examined the driver of the vehicle as R.W.1.

8. On giving due consideration to the oral and documentary evidence adduced by either side, besides examining the documents the Tribunal came to the conclusion that the accident occurred due to the rash and negligent driving of the vehicle belonging to the appellant herein. As the negligence aspect and liability is not questioned by the appellant, we are considering here as to whether the quantum awarded by the Tribunal is correct or not ?

9. The major area of concern focussed by the learned counsel for the appellant is that the income arrived at by the Tribunal based on the Partnership cannot be a factor to be taken into consideration and, therefore, the quantum arrived at by the Tribunal is not correct. On the otherhand, learned counsel appearing for the respondents / claimants would contend that the quantum arrived at by the Tribunal is based purely on the documents available on record and therefore, no interference need be made in the compensation awarded by the Tribunal.

10. We have heard the learned counsel appearing on either side and perused the records made available on record.

11. Since the main thrust of the argument of the learned counsel appearing for the appellant was about the quantum fixed by the Tribunal, we shall first consider that aspect. A perusal of Ex.P.5 series would indicate that the income of the deceased for the assessment year 2010-2011 was a sum of Rs. 1,85,432/- While filing the return for the assessment year 2010-2011, the deceased had declared his income as Rs.1,85,432/- per annum from and out of M/s. Siddhi Vinayagar Auto Consultancy and has not mentioned about the income arrived from M/s. ESSAR Enterprises. The Tribunal has fixed the monthly income of the deceased as Rs.15,453/- based on this document only and therefore, it is crystal clear that the

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

Tribunal has not taken the income derived from M/s. ESSAR Enterprises, a partnership firm, into consideration while fixing the monthly income. If that be so, the argument of the learned counsel for the appellant that the business of the partnership firm would go on despite the death of the partner and therefore, the Tribunal has erred in fixing an amount towards loss of estate of the deceased cannot be sustained. After taking the monthly income of the deceased at Rs. 15,453/-, the Tribunal has added 30% salary by relying upon the judgment reported in 2012 AIR SCW 2892 [Santhosh Devi vs. National Insurance Company Ltd. and others]. As the age of the deceased was 49 years, the Tribunal has adopted 13 as multiplier as per the decision of the Supreme Court rendered in 2009 5 L.W. 561 [Sarala Varma & Others vs. Deli Transport Corporation and another] and fixed the monthly income of the deceased at Rs.20,089/-. After deducting 1/4th amount towards his personal expenses, a sum of Rs.15,067/- per month is taken and pecuninary loss is calculated as Rs. 23,50,452/- [Rs.15,087 x 12 x 13]. Therefore, we confirm the amount awarded by the Tribunal under the head pecuninary loss.

12. The Tribunal has also awarded a sum of Rs. 20,000/- towards funeral expenses; Rs. 2,00,000/- as loss of consortium; Rs. 50,000/- each to claimants 2 to 5 towards loss of love and affection and a sum of Rs. 5,000/- towards medical expenses. Thus, the total compensation awarded comes to Rs. 27,75,452/-. While we have no hesitation in confirming the amount awarded by the Tribunal under the heads funeral expenses; loss of love and affection and medical expenses, we are slightly hesitant in confirming the amount awarded under the head loss of consortium. As per the principles laid down in the decision of the Supreme Court rendered in Rajesh vs. Rajbir Singh, reported in 2013 (9) S.C.C. 54, for loss of consortium maximum of a sum of Rs.1,00,000/- could be awarded. Therefore, while confirming the quantum fixed by the Tribunal on the other heads, this Court fixes the amount awarded under the head Loss of Consortium as Rs.1 lakh instead of a sum of Rs.2 lakhs.

13. Accordingly, the total compensation of Rs.27,75,452/- is reduced to a sum of Rs.26,75,452/-. The Civil Miscellaneous Appeal is partly allowed. Connected miscellaneous petition is closed. There shall be no orders as to the costs.

WEB COPY

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

https://hcservices.ecourts.gov.in/hcservices/

gp

To

The Motor Accident Claims Tribunal
Small Causes Court,
Chennai

1 CC to Mr.V.Velu, Advocate SR.No. 1444

1 CC to the Spl.Government Pleader (CS), SR.No. 1312

Copy to

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

C.M.A. No: 1912 of 2013

SV (CO)
PSI (19.03.2015)

HIGH COURT OF JUDICATURE MADRAS
सत्यमेव जयते
WEB COPY

https://hcservices.ecourts.gov.in/hcservices/