IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.06.2015

Coram:

The Hon'ble Mr. Justice N.KIRUBAKARAN

C.M.A.No.221 of 2013
and M.P.No.1 of 2013

Tmt.Benedicta .. Appellant / Petitioner

vs

1.Tmt.Philomena
2.Irudhayaraj
3.K.Sivakumar
4.Cholamandalam M/s.GEneral Insurance Co. Ltd.,
Dare House, 2nd Floor,
NSC Bose Road,
Chennai - 1. .. Respondents / Respondents

Civil Miscellaneous Appeal under Section 173 of M.V. Act against the decree and judgment dated 26.06.2012 made in MCOP No.2656 of 2008 on the file of Motor Accident Claims Tribunal, (Chief Small Causes Court), Chennai.

For Appellant : Mr.R.Thirugnanam
For Respondents : Ms.Salim Fathima for Mr.R.Shivakumar for R1 & R2

Mrs.Harini for Mr.N.Vijayaraghavan for R4

J U D G M E N T

The appeal has been preferred against the award passed in the claim petition filed by the wife of deceased Sahaya Nirmal Raj, aged about 32 years, a real estate broker alleged to be earning about Rs.10,000/- per month who died in the accident occurred on 22.05.2007.

2. Heard Mr.Thirugnanam, learned counsel appearing for the appellant, Ms.Salim Fathima, learned counsel appearing for the first & second respondents and Mrs.C.Harini, learned counsel appearing for the fourth respondent/insurance company.

3. The deceased was claimed to have been doing real estate business earning a sum of Rs.10,000/- per month. Though PW7, a real estate broker has deposed that at the time of accident, the deceased was earning about Rs.10,000/- per month and if he would have been

alive, he would be earning Rs.50,000/- per month, the tribunal did not believe the version of the said witness and took Rs.4,500/- as notional monthly income. The said determination is very fair and justifiable in the absence of material evidence with regard to the income.

4. Mr.Thirugnanam, learned counsel appearing for the appellant as well as Ms.Salim Fathima, learned counsel appearing for the first and second respondents would contend that the tribunal has not taken into consideration the future prospects of the deceased and therefore the monthly income should be enhanced.

5. On the other hand, Mrs.C.Harini, learned counsel appearing for the respondent/insurance company would oppose that the real estate business cannot yield a regular income and therefore there is no question of adding any future prospects for calculating the monthly income. The said issue was already answered by the Hon'ble Supreme Court in Santoshi Devi V. National Insurnace Company Limited and Others reported in 2012 ACJ 1428. wherein it is held that even in case of non-earning members, 50% has to be added as future prospects. Therefore, this court adds 50% towards future prospects as the deceased was aged about 32 years at the time of accident. Thus, the monthly income would be Rs.4500 + 50% = 6750/-. The size of the family of the deceased is three and therefore 1/3rd is required to be deducted and the same was rightly adopted by the tribunal. After deducting 1/3rd towards personal expenses, the loss of income would be Rs.6750 less 1/3rd comes to Rs.4500/-. The appropriate multiplier as the SARLA VERMA's case (2009 (2) TN MAC 1 (SC) is 16 and the loss of income is determined as follows -

Rs.4500 + 50% = Rs.6750 x 2/3 x 12 x 16 = Rs.8,64,000/-

6. The appellant, being the wife of the deceased was awarded only a sum of Rs.20,000/- towards loss of consortium. As per the judgment of the Hon'ble Supreme Court in Rajesh & Ors. vs. Rajbir Singh & ors. reported in 2013 (3) CTC 883, Rs.1,00,000/- is required to be awarded towards loss of consortium and accordingly, Rs.1,00,000/- is awarded under this head. Similarly, Rs.10,000/- alone was awarded to the respondents 1 and 2, who are the parents of the deceased, towards loss of love & affection. The respondents 1 and 2 had lost their only son who died in the accident. The pain & sufferings and mental agony undergone by the parents cannot be under-estimated and cannot be compensated by money. In any event, in an endeavour to compensate, a sum of Rs.1,00,000/- is awarded taking the peculiar circumstances of the case. Rs.10,000/- awarded towards funeral expenses is too low and the same is enhanced to Rs.20,000/- alongwith transportation. Rs.10,000/- towards expectation of life is adjusted towards Rs.10,000/- towards loss of estate. Thus, the award of Rs.6,36,000/- is hereby enhanced to Rs.10,94,000/-, rounded off to Rs.11,00,000/-, break-up as follows -

(1)	Loss of income ...	Rs,	8,64,000/-
(2)	Loss of consortium ...	Rs.	1,00,000/-
(3)	Loss of love & affection	Rs.	1,00,000/-
(4)	Funeral expenses & Transportation	Rs.	20,000/-
(5)	Loss of estate	Rs.	10,000/-
	Total		Rs.10,94,000/-

Rounded off to Rs.11,00,000/-

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

7. Taking into consideration, re-marriage of the appellant, out of the total award amount, the tribunal awarded only a sum of Rs.1,36,000/- to her. The tribunal committed a very serious error by not awarding sufficient amount to the widow/appellant. Irrespective of whether she got married or not, her class I legal heir is not affected and it is a well settled law. The allotment of a small amount is against the very public policy of the Government. In fact, the State has recognized widow's re-marriage and because of the fact that she got re-married, her share cannot be reduced and therefore out of the entire award amount of Rs.11,00,000/-, this Courts awards a sum of Rs.4½ lakhs to the appellant/wife of the deceased. Similarly, the mother is also a class I heir and she is also equally entitled as to that of wife and therefore this Courts awards a sum of Rs.4½ lakhs to the first respondent/mother of the deceased. The second respondent/father of the deceased who is suffering without his only son is also entitled to a share in the compensation but not to the extent of the other two persons and therefore a sum of Rs.2 lakhs is awarded to him.

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

9. It is represented that the second respondent/insurance company has already deposited the entire amount awarded by the tribunal. Hence, the insurance company is directed to deposit the enhanced amount awarded by this Court, alongwith interest and costs, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the appellant/wife of the deceased and the first respondent/mother of the deceased are permitted to withdraw their share of Rs.4½ lakhs each, alongwith proportionate interest and costs, after adjusting the amount already withdrawn, if any. The second respondent/father of the deceased is permitted to withdraw his share of Rs.2 lakhs alongwith proportionate interest and costs, after adjusting the amount already withdrawn, if any.

10. The learned counsel for the appellant/claimant is directed to pay the requisite court fee for the enhanced compensation within a period of ten days from the date of receipt of a copy of this order.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To
1.Motor Accident Claims Tribunal
The Chief Judge,
Small Causes Court,
Chennai.

2.The Section officer
VR Section High court Madras

+1 cc to Mr.R.Thirugnanam Advocate sr.31237
+1 cc to Mr.S.RaviKumar Advocate sr.31372
+1 cc to Mr.M.B.Gopalan Advocate sr.31690

C.M.A.No.221 of 2013

aa04/08/2015