IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 08-10-2015

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

AND

THE HONOURABLE MR.JUSTICE M.VENUGOPAL

C.M.A.No.2445 OF 2013

M/s.Reliance General Insurance Co.Ltd.,
Unit No.1, 3rd Floor,
No.23, Spur Tank Road,
Chetpet, Chennai-600 031. ...Appellant/I st Respondent

-vs-

1.V.Chitra
2.Manoj (Minor) /Petitioners 1 to 3
3.V.Seetharaman Chettiar
4.M.Samidurai
5.A.S.Mani ....Respondents/Respondents 1 &2

R-2 Minor rep.by mother and NF 1st respondent
R-5-set exparte before Lower Court

Appeal is filed against the judgment and decree, dated 23.12.2010, made in M.C.O.P.No.68 of 2010, on the file of Motor Accident Claims Tribunal, (Fast Track Court), Kallakurichi.

For appellant : Mr.M.B.Raghavan

For respondents 1 to 3 : Mr.R.Prabudoss, for M/s.A.G.Rajan

J U D G M E N T
(Judgment of the Court was delivered by S.Manikumar,J.)

Being aggrieved by the quantum of compensation of Rs.19,50,000/-, with interest, at the rate of 7.5% per annum, from the date of claim till deposit, awarded to the legal representatives of the deceased, in M.C.O.P.No.68 of 2010, on the file of Motor Accident Claims Tribunal, (Fast Track

Court), Kallakurichi, dated 23.12.2010, M/s.Reliance General Insurance Company Limited, has filed this appeal, mainly contending, inter alia, that the Claims Tribunal has erred in fixing Rs.15,000/- as the monthly income of the deceased, aged about 40 years, at the time of accident, and claimed to be a Labour Contractor in United Arab Emirates.

2. According to the appellant, in the absence of production of any document to prove the nature of employment and income earned by the deceased, proximate to the date of accident, the Tribunal has fixed the fanciful sum of Rs.15,000/-, as monthly income.

3. Per contra, taking this Court through the impugned judgment, wherein the Claims Tribunal has considered the contents of Ex.P-6, Sponsorship Declaration of the deceased, attested by attachee, Consular, Embassy of India, Abudabi; and Ex.P-7-Passport of the deceased, Mr.R.Prabudoss, learned counsel for the contesting respondents/claimants, submitted that there is no error in accepting the avocation and income of the deceased, for the purpose of computing the loss of dependency and, therefore, prayed to sustain the impugned award.

4. As the challenge in this appeal is limited to the determination of avocation, monthly income of the deceased and, consequently, the quantum of compensation awarded by the Tribunal, there is no need to advert to the other aspects.

5. As per Ex.P-7-Passport, Date of Birth of the deceased was 10.09.1967. The accident occurred on 08.03.2007. Based on the above, the Tribunal has fixed the age of the deceased as 40 years. Multiplier applicable to the age group of persons between 36 and 40 years is 15. Upon perusal of Ex.P-6- Sponsorship Declaration of the deceased, attested by attachee, Consular, Embassy of India, Abudabi, the Claims Tribunal has noticed that the deceased Velu was engaged as a Labour Supervisor in Abudabi, with an earning of 4500 Dinars. The Tribunal has taken note of the Indian value of one Dinar as Rs.12.35, as on 24.11.2010, as per the submission of the learned counsel for the respondents/claimants. The Tribunal has also recorded that Ex.P-6 is dated 22.05.2004. Upon perusal of Ex.P-7-Passport of the deceased, the Tribunal has also recorded that the same was issued on 16.09.2001, valid up to 15.09.2011. Scrutinising the entries in the Passport, the Tribunal has further recorded that there were entries up to 26.01.2007 and that the deceased had returned to Chennai between 2005 and 2007.

6. Though the respondents/claimants have contended that the deceasd earned Rs.50,000/- per month as a Labour

Supervisor/Contractor, in terms of Indian value of 4500 Dinars, as per the earnings mentioned in Ex.P-6 Sponsorship Declaration, by observing that the entry in Ex.P-6 does not indicate that it was monthly earning, and having regard to the entries in Ex.P-7 Passpart, indicating a Resident Visa, and visit to India, in the years 2005,2006 and 2007, and also by observing that a person engaged in labour contract in India would earn Rs.10,000/- to Rs.15,000/- per month, the Tribunal has determined the monthly income as Rs.15,000/-, and after deducting 1/3rd towards the personal and living expenses of the deceased, computed the loss of dependency, by applying '16' multiplier and quantified the sum to Rs.19,20,000/-. In addition to the above, the Claims Tribunal has awarded Rs.5,000/- towards loss of Consortium; Rs.15,000/- under the head loss of love and affection; Rs.5,000/- for funeral expenses and Rs.5,000/- for loss of estate. Altogether, the Claims Tribunal has awarded Rs.19,50,000/-, as compensation, with interest, at the rate of 7.5% per annum from the date of claim till deposit.

7. Considering the limited challenge, we have perused the records. Ex.P-6 is the Sponsorship Declaration of the deceased, dated 22.05.2014, wherein it is stated that the deceased was a Labour Supervisor, and earned 4500 Dinars. Serial No.9 of the Declaration, dated 22.05.2014, is as follows :

"Purpose of Visit : Residence Visa. "

As per the details therein, the Declaration should be sworn in before a Notary Public or a Diplomat Consular Office Indian Embassy or High Commission in the country of the sponsor, who is authorised to administer oaths. During cross-examination, P.W.1, wife, has clearly deposed that Ex.P-6 was the declaration given to the High Commission, Government of India. She has also deposed that Ex.P-6 declaration was given before joining employment in the foreign country at Abudabi. Credibility of this document of Ex.P-6 has not been doubted by the appellant-insurance company, nor evidence adverse to the claimants is elicited. Perusal of Ex.P-7 Passport of the deceased Velu shows that it was issued on 16.09.2001, valid up to 15.09.2011. There are entries by the Immigration Department at Chennai Airport, dated 29th July,2003, 4th March,2005, 19th March,2005; 19th October,2005, 11th March,2006; and 26th January,2007, respectively. Passport also indicates, that there are entries by Sultante of Oman, issued at Seeb International Airport, 22nd March,2002; 6th August,2003; 18th October,2005; 24th July,2002; 7th August,2002; 28th July, 2003; 3rd March,2005, 19th March,2005; 11th March,2006 and 26th January,2007, respectively. Seal affixed in the Passport indicates, "Residence". It further states, Residence Permit becomes invalid, if the bearer resides out of UAE, for more than six months. The first of such entry is valid from 13.10.2001 to 12.10.2004, and thereafter, for the period *between 21.11.2004 to 20.11.2007. The accident has occurred on 08.03.2007, well within the period of Resident Permit i.e., 20.11.2007. From the details of Ex.P-6 Declaration and Ex.P-7 Passport, it could be deduced that the deceased had valid Resident Permit, issued by UAE. Xerox copy of Ex.P-8-Passport of Chitra, wife of the deceased, shows that it was issued on 08.12.2003, valid up to 07.12.2013. Entry in Ex.P-8 indicates that P.W.1 had gone to Abudabi in June 2004, and as per the Immigration entry, the purpose of visit was not for employment. Correspondingly, there is an entry by the Immigration authority, Abudabi. Though there are entries in Ex.P-6, Ex.P-7 and Ex.P-8, stated supra, taking note of the fact that the accident has occurred in India, and that the average monthly income of the deceased could be Rs.15,000/-, the Claims Tribunal has fixed the same, for the purpose of computing the loss of dependency. Age of the deceased as on the date of accident was 40 years. From the entries culled out in the abovesaid documents, it could be reasonably presumed that the deceased was employed in Abudabi. However, the name of the employer is not shown. For the mere omission in the declaration about the name of the employer, it cannot be contended that the deceased was not employed in Abudabi, at any point of time. UAE Resident Visa Entries in the Passport are indicative of employment of the deceased as a Labour Supervisor/Contractor and consequently the income. In the light of the discussion with reference to the abovesaid documents, the contrary contention of the appellant that there are no documents to prove employment and income of the deceased cannot be countenanced. It cannot also be held that the Tribunal has erred in fixing a fanciful sum, as income. However, there is a manifest error committed by the Claims Tribunal, in not considering the future prospects of the deceased in employment and earning. Compensation of Rs.5,000/- awarded under the head loss of consortium; Rs.15,000/- awarded for loss of love and affection to the minor and father respectively; Rs.5,000/- for funeral expenses, is less. Compensation of Rs.5,000/- awarded under the head loss of estate also is low. Leaving it open to the legal representatives of the deceased/respondents to vindicate, if so advised, we see no merit in the appeal filed by the appellant-insurance company, for reduction of the quantum of compensation. C.M.A.is dismissed.*

8. Record of proceedings shows, that while granting interim stay in M.P.No.1 of 2013, on 14.08.2013, this Court has directed the appellant-insurer, to deposit the entire award amount, with accrued interest and costs, to the credit of M.C.O.P.No.68 of 2010, on the file of Motor Accident Claims Tribunal. At the time of filing of the Claim Petition in the year 2007, respondent No.2 was a minor, aged 2 years, and represented by his next friend, mother/P.W.1. As per the age *shown in the Claim Petition, he would not have attained majority on this day. Therefore, except the share apportioned to the minor with proportionate interest, the other legal representatives, namely, wife and father of the deceased, are permitted to withdraw their respective shares, with proportionte interest, and costs, by making necessary application before the Tribunal. The share apportioned to the minor, with proportionate interest, shall be deposited in a Fixed Deposit in a Nationalised Bank, proximate to the residence of P.W.1/mother, ultil the minor attains majority. P.W.1/mother is permitted to withdraw interest, accrued on the Fixed Deposit of the minor, once in three months. No costs. Consequently, the connected M.P.Nos.1 of 2013 and 1 of 2015 are closed.*

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To
The Motor Accident Claims Tribunal,
(Fast Track Court),
Kallakurichi.

copy to: The section Officer
V.R.Section,High court Madras.

+1 cc to Mr.M.B.Gopalan,Advocate(sr.55811)

C.M.A.No.2445 OF 2013

jsv(co)
cp 2/11/2015