IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 01.03.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUDHAKAR
AND
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

C.M.A. NO.1270 OF 2015
CROSS OBJECTION NO.6 OF 2016
AND
M.P. NO.1 of 2015

M/s.National Insurance Co. Ltd.,
Divisional Office-I,
LRN Complex, Saradha College Road,
Salem-636 007 ...Appellant in C.M.A.1270/15 and R-1 in Cross Objection No.6/16

- Vs -

1. Kaviya
2. Poomani
3. Subramani ...RR-1 to 3 in C.M.A.1270/15 and Cross Objectors in Cross Objection No.6/16

4. Ezhilaasu ...R-4 in C.M.A.1270/15 and R-2 in Cross Objection No.6/16

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the Award and decree dated 11.09.2014 passed by the Motor Accidents Claims Tribunal (Special District Court), Salem District, made in M.C.O.P.No.805 of 2012.

Cross Objection filed under Order 41 Rule 22 of the Civil Procedure Code against the Award and decree dated 11.09.2014 passed by the Motor Accidents Claims Tribunal (Special District Court), Salem District, made in M.C.O.P.No.805 of 2012.]

For Appellant in CMA and R-1 in Cross Objection : Mr.J.Chandran

For Respondents in CMA and Cross Objectors in Cross Objection : Mr.SP.Yuvaraj

COMMON JUDGMENT
(DELIVERED BY R.SUDHAKAR, J.)

Heard the learned counsel appearing for the appellant (first respondent in Cross Objection) and the learned counsel appearing for the respondents/claimants (cross objectors 1 to 3 in Cross Objection).

2. The appellant/insurer of the vehicle has filed the appeal challenging the Award dated 11.09.2014 passed by the Motor Accident Claims Tribunal (Special District Court), Salem, made in M.C.O.P.No.805 of 2012.

3. It is a case of fatal accident. On 24.01.2012 at about 5.30 p.m., when the deceased Chandrasekaran, aged 23 years, was travelling in the Hero Honda Splendour Pro motorcycle, bearing Reg.No.TN-52-C-0369 as pillion rider on Annur - Karumathampatty Main Road, Ezhilarasu, the fourth respondent in the appeal, who was riding the vehicle, in a rash and negligent manner, tried to overtake one Eicher vehicle and hit the said vehicle, as a result of which, the deceased fell down and sustained grievous head injury. Inspite of the treatment given to him in the hospital, the deceased died. A case was registered against the fourth respondent herein.

4. The deceased, on the date of accident, was working as an Engineer in Hansen Drives Ltd., Coimbatore. The claimants, viz., the wife, mother and father of the deceased, filed claim petition claiming a sum of Rs.50,00,000/- as compensation.

5. In support of the claim petition, the first claimant, viz., the wife of the deceased examined herself as P.W.1, besides P.Ws.2 and 3 were examined and Exs.P-1 to P-17 were marked, the details of which are as follows:-

Ex.P-1	-	First Information Report
Ex.P-2	-	Accident Register
Ex.P-3	-	Post-mortem report
Ex.P-4	-	Legal Heirship Certificate
Ex.P-5	-	T.C.
Ex.P-6	-	Appointment letter
Ex.P-7	-	Voter I.D.
Ex.P-8	-	Income Certificate
Ex.P-9	-	Bank Register
Ex.P-10	-	Rough sketch
Ex.P-11	-	Motor Vehicle Inspector Report

Ex.P-12	-	Memo evidence
Ex.P-13	-	Driving licence
Ex.P-14	-	Employment certificate
Ex.P-15	-	Appointment letter
Ex.P-16	-	Permanency employment letter
Ex.P-17	-	Salary Certificate of November 2011

6. On the side of the respondents, Ezhilarasu, the fourth respondent, was examined as R.W.1 and no documentary evidence was marked.

7. The Tribunal based on the oral evidence of P.Ws.1 to 3, the F.I.R. and also taking into account the documentary evidence and further there being no satisfactory evidence adduced on behalf of the appellant-Insurance Company to refute the evidence as to the rash and negligent driving of the vehicle, came to the conclusion that the accident was caused due to the rash and negligent driving by the driver of the motor cycle, and therefore, the liability was fixed on the appellant herein and consequently the appellant was directed to compensate the claimants. Accordingly, the Tribunal awarded compensation under the following heads :-

Loss of Income	-	Rs.30,39,120/-
Towards Funeral Expenses	-	Rs. 25,000/-
Loss of consortium to the first claimant	-	Rs. 50,000/-
Loss of Love & Affection to the second and third claimants	-	Rs. 20,000/-
Total Compensation less Tax	-	Rs.28,20,700/- (rounded off)

8. In all the Tribunal awarded a compensation of Rs.28,20,700/= with interest at the rate of 7.5% from the date of claim petition till date of payment/deposit with apportionment of Rs.15 Lakhs, Rs.8 Lakhs and Rs.5,20,700/= to claimants 1 to 3 respectively. Aggrieved by the said award, the insurer of the motor cycle is before this Court by filing this appeal.

9. The only point raised by the learned counsel appearing for the appellant-Insurance Company is that the income fixed is on the higher side, as admittedly, the deceased was working as an Engineer and was not earning the amount fixed by the Tribunal, and therefore, notional income should have been fixed. Per contra, it is submitted by the learned counsel for the claimants that under many of the other heads, the amount awarded by the Tribunal is on the lower side. Further, it is submitted

by the learned counsel for the claimants that the Tribunal has fixed the income of the deceased based on Ex.P-17, the pay certificate and, therefore, no interference is called for with the well considered finding of the Tribunal. It is also submitted by the learned counsel for the claimants that the income tax deducted by the Tribunal is not justified as the total earning of the deceased per year was Rs.1,68,840/= only.

10. This Court has given its careful consideration to the above contentions advanced by either parties and also perused the materials available on record. The claimants have filed Cross Objection claiming enhancement. Though it is trite law that the income should be arrived at keeping in mind the avocation of the deceased, on a perusal of the order, this Court is of the considered opinion that the multiplier adopted by the Tribunal is just and proper. However, taking into consideration the entire gamut of facts and also keeping in mind the fact that the deceased was an Engineer by profession and his monthly income having been substantiated by the pay certificate, Ex.P-17, this Court is of the considered view that the amount awarded by the Tribunal under the head "Loss of Income" is not on the higher side and hence, it requires no interference by this Court.

11. Insofar as the argument advanced by the learned counsel for the claimant that no amount ought to have been deducted under the head of income tax, as the income of the deceased is below the taxable slabs, this Court is inclined to accept the said argument. As has been held by the Supreme Court in Vimal Kanwar & Ors. – Vs – Kishore Dan & Ors. (2013 (7) SCC 476), it is incumbent upon the insurance company to prove that no tax has been deducted. However, no proof has been submitted on behalf of the insurance company to substantiate that no tax has been deducted. A perusal of the order of the Tribunal reveals that the income of the deceased including future prospects works out to Rs.2,53,000/=. In the net taxable income, standard deduction of Rs.2,00,000/= has to be deducted and only the rest of the amount is taxable under the respective tax slabs. Further, it is also evident that the Tribunal, considering the pay certificate of the deceased, has, of its own, deducted tax on the entire amount of income without giving due weightage to the statutory deduction as prescribed under law. The Tribunal ought to have deducted the standard deduction permissible during the said financial year while arriving at the income for which tax is deductible. In such view of the matter, the tax at 10% deducted on the total compensation arrived at by the Tribunal is not justified. Accordingly, the compensation that is to be awarded after deducting appropriate tax is as under :-

Rs.21,105 X 12	=	Rs.2,53,260/=
Less : Standard Dedn.	=	Rs.2,00,000/=
Taxable Income	=	Rs. 53,260/=

Tax on income	=	Rs. 5,326/=
Surcharge @ 2%	=	Rs. 107/=
Total	=	Rs. 5,433/=
Total income per year	=	Rs.2,47,827/=
1/3 dedn. Towards personal exp.	=	Rs. 82,609/=
Loss of income to family	=	Rs.1,65,218 X 18
	=	Rs.29,73,924/=

12. Accordingly, the compensation awarded by the Tribunal is modified as hereunder :-

	Compensation awarded by the Tribunal	Compensation awarded by this Court
Loss of Income	Rs.27,25,700/= (Rs.30,39,120 - 3,13,420)	Rs.29,73,924/=
Towards Funeral Expenses	Rs. 25,000/-	Rs. 25,000/-
Loss of consortium to the first claimant	Rs. 50,000/-	Rs. 50,000/-
Loss of Love & Affection to 2nd & 3rd claimants	Rs. 20,000/-	Rs. 20,000/-
Total compensation less tax	Rs.28,20,700/=	Rs.30,68,924/=

13. Accordingly, this Civil Miscellaneous Appeal is dismissed with the above modification. The Cross Objection filed by the claimants for enhancement of compensation is allowed in the above terms. The appellant/insurer is directed to deposit the entire award amount, less the amount, if any deposited at the time of preferring the appeal, along with interest @ 7.5%, as directed by the Tribunal, to the credit of MCOP No.805/2012 within a period of eight weeks from today. On such deposit, the respondents/claimants are permitted to withdraw the amount, as per the above award passed by this Court as per apportionment made by the Tribunal. Consequently, connected miscellaneous petition is closed. However, in the circumstances of the case, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

sl/gln

To

1. The Special District Judge,
   Motor Accidents Claims Tribunal
   Salem.

2. The Record Keeper
   V.R. Section
   High Court, Madras.

+1cc to Mr.J.Chandran, Advocate, S.R.No.13055
+1cc to Mr.SP.Yuvaraj, Advocate, S.R.No.13161

C.M.A. NO. 1270 OF 2015
AND
CROSS OBJECTION NO. 6 OF 2016

KSJ(CO)
CA(30/03/2016)