IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.09.2016

CORAM

THE HONOURABLE MR. JUSTICE T. RAJA

C.M.A.No.1899 of 2011

1.J.Leeladevi
2.M.Athilakshmi
3.J.L.Harini (minor) .. Appellants/ Petitioners
rep by mother and
natural guardian J. Leeladevi

Vs

1.N.Babu
2.The United India Insurance Co. Ltd.,
No.134, Greems Road, Silingi Buildings,
IV - Floor, HUB, Chennai - 6. .. Respondents/ Respondents

Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award dated 09.08.2006, made in M.C.O.P.No.338 of 2004, on the file of the Sub-Court, Motor Accident Claims Tribunal, Tiruvallur.

For appellants : Mr.K.R.Ponnusamy for Anand and Surya

For R2 : Mr.S. Arunkumar
For R1 : Exparte

JUDGMENT

The appeal is preferred by the claimants against the award dated 09.08.2006, made in M.C.O.P.No.338 of 2004, on the file of the Sub-Court, Motor Accident Claims Tribunal, Tiruvallur, in and by which, the Tribunal has awarded a sum of Rs.4,38,000/- for the death of one M.Jeyamani, aged about 27 years at the time of accident.

2. On 03.04.2004 at about 15.00 hrs., while the deceased/Jayamani was proceeding in his motor cycle bearing Registration No.TN-07-D-1641 from Perumbakkam to Mettukuppam, a TVS champ bearing Registration No.TN-22-M-9493, belonging to the first respondent herein and insured with the second respondent herein, driven by its rider in a rash and negligent manner, dashed against the said motor cycle and as a result, the deceased was thrown out and sustained grievous injuries and died on the way to the hospital. The claimants are the wife, mother

and minor daughter of the deceased. They filed a claim petition claiming a sum of Rs.8,00,000/- as compensation.

3. After considering the oral and documentary evidence, the Tribunal held that the accident had occurred only due to the rash and negligent driving of the rider of the above said TVS champ and awarded a compensation of Rs.4,38,000/- with interest at 9%. Aggrieved by that award, the claimants have filed the present appeal for enhancement. Pending appeal, they have also filed a petition in CMP.No.12594 of 2016 seeking permission to enhance the claim amount to Rs.13,00,000/- instead of Rs.8,00,000/-.

4. Learned counsel appearing for the claimants / appellants submitted that at the time of accident, the deceased was 27 years old and he was working as Welder-cum-Gas Cutter and earning a sum of Rs.4,000/- per month and to substantiate the monthly salary, he has produced salary certificate, marked as Ex.P8. However, the Tribunal, without considering the said document produced by the claimants, fixed his monthly salary at Rs.3000/- per month and thereby it has awarded a sum of Rs.4,08,000/- towards loss of income, that too without adding 50% of the salary amount towards future prospects, therefore, he pleaded, since the deceased died at the age of 27 years, leaving behind his wife, mother and his minor daughter, the Tribunal ought to have added 50% of his salary towards future prospects while calculating compensation towards loss of income.

5. In his further submissions, learned counsel for the appellant, by relying upon the judgment of the Hon'ble Apex Court in Rajesh and others v. Rajbir Singh and others (2013 (3) CTC 883 (SC), submitted that the Tribunal erred in not awarding a sum of Rs.1,00,000/- towards loss of consortium as the wife of the deceased was aged about only 20 years at the time of accident and based on the above said judgment, he further prayed before this Court to award a sum of Rs.50,000/- each to the mother and minor daughter of the deceased towards loss of love and affection and a sum of Rs.25,000/- towards funeral expenses by modifying petty amount of Rs.8000/- awarded by the Tribunal. With these submissions, he prayed for enhancement of the compensation arrived at by the Tribunal.

6. Learned counsel appearing for the second respondent Insurance Company submitted that the Tribunal had considered all the relevant materials and evidence on record and came to the right conclusion and awarded a just, fair and reasonable compensation. Hence, the order of the Tribunal has to be confirmed.

7. Heard the learned counsel appearing on either side and perused the materials available before this Court.

8. It is an admitted fact that at the time of accident, he was aged about 27 years and was working as Welder-cum-Gas Cutter. To substantiate that the deceased was earning a sum of Rs.4,000/- per month, the claimants have produced Ex.P8-salary certificate and this has been supported by the employer/M/s.Sairam welding shop in favour of the claimants, for, in deposition, one Mr.Kumar/P.W.3 deposed that the deceased working in their concern and earning a sum of Rs.4,000/- per month. Therefore, in my view, the Tribunal ought not to have refused to accept Rs.4,000/- as the monthly income of the deceased.

9. It is also the contention of the learned counsel for the appellants/claimants that the Tribunal, while arriving compensation towards loss of income, ought to have added 50% of salary towards future prospects. Therefore, it is more appropriate to refer to the judgment of the Hon'ble Apex Court in Rajesh's case (cited supra) and for better appreciation, relevant portion of the said judgment is extracted below:

> "8. Since, the Court in Santosh Devi case actually intended to follow the principle in the case of salaried persons as laid down in Sarla Verma case and to make it applicable also to the self-employed and persons on fixed wages, it is clarified that the increase in the case of those groups is not 30% always; it will also have a reference to the age. In other words, in the case of self-employed or persons with fixed wages, in case, the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future prospects. Needless to say that the actual income should be income after paying the tax, if any. Addition should be 30% in case the deceased was in the age group of 40 to 50 years."

A mere perusal of the above said judgment shows that the Court can award 50% of the actual salary to the income of the deceased towards future prospects if the deceased was below 40 years. In the case on hand, as stated above, the deceased was 27 years old at the time accident and was earning a sum of Rs.4000/- per month. Therefore, this Court is of the considered view that the Tribunal ought to have added 50% of his salary towards future prospects as per the settled legal position. Further, the Tribunal has rightly adopted the multiplier method by following the judgment of the Hon'ble Apex Court in Sarla Verma Vs. Delhi Transport Corporation [(2009) 6 SCC 121], therefore, the same is hereby confirmed. Accordingly, this Court arrives at the compensation towards loss of income of the deceased as stated below:

Salary of the deceased = Rs.4000/- p.m.
50% of the salary to be added as future prospects = Rs.4000+2000
= Rs.6000/- p.m.
1/3rd of Rs.6000/- deducted as personal expenses = Rs.4000/- p.m.
Loss of income of the deceased after multiplier of 17 is applied (Rs.4000 x 12 x 17) = Rs.8,16,000/-

10. Further, as per the judgment of Rajesh's case (cited supra), this Court, on taking note of the loss of spouse's affection, comfort, solace, companionship, society, assistance, protection, care and sexual relations during the future years, deems fit to award a sum of Rs.1,00,000/- towards loss of consortium to the wife, as she was only 20 years at the time of death of her husband. Again, based on the above said judgment, this Court hereby awards a sum of Rs.50000/- each to the mother and minor daughter of the deceased towards loss of love and affection and Rs.25000/- towards funeral expenses, instead of Rs.10000/- and Rs.8000/- respectively awarded by the Tribunal. The Tribunal has also further awarded a sum of Rs.2,000/- towards transportation and Rs.10000/- towards shock and mental agony, which are not necessary since the compensation awarded under the heads of funeral expenses and love and affection can compensate such amount. With regard to the interest, the Tribunal has awarded 9% interest per annum, which stands modified to 7.5% as the accident had occurred in the year 2004.

11. Thus, in toto, this Court hereby awards a sum of Rs.10,41,000/- as total compensation. The second respondent Insurance Company is directed to deposit the entire award amount along with interest at 7.5% per annum from the date of claim petition till the date of realisation, less the amount already deposited if any, to the credit of M.C.O.P.No.338 of 2004, Sub-Court, Motor Accident Claims Tribunal, Tiruvallur, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants 1 and 2 are entitled to withdraw their respective share amount, by moving necessary application before the Tribunal. In respect of the minor's shares i.e. third claimant, it is made clear that the same shall continue to be in the deposit in any nationalised bank till she attains the majority. The first claimant is also permitted to withdraw the interest accrued in the deposit of the minor's shares once in three months on making proper application. The claimants are directed to pay the necessary additional Court fee for the enhanced award amount.

12. In fine, for the reasons stated above, the Civil Miscellaneous Appeal stands allowed as indicated above. Consequently, CMP.No.12594 of 2016 is also allowed. No Costs.

Sd/-
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

rkm

To

1.The Motor Accident Claims Tribunal,
Sub-Court, Tiruvallur,

1 cc to Mr.S. Arunkumar, Advocate, Sr. 50744
1 cc to M/s. Anand and Suryas, Advocate, Sr. 50420

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SSI (CO)
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