IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 25.11.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A. Nos.138 & 139 of 2014
&
C.M.P.Nos.5223
MP Nos. 121/14

The Branch Manager,
The New India Assurance Company,
No.10/11, Church Road,
Dharapuram. ... Appellant in both CMAs/3rd Respondant in both the MCOPs 1335&1336/10

Versus

1.Susila
2.Minor Sindhu
3.Minor Vinitha
4.Minor Shalini
(Minors rep. By their mother and next friend Susila)
5.Karuppanna Gounder
6.Arammal
7.Maridurai
8.Swathi Hatcheries ...Respondents in CMA No.138/2014/ Petitioners/1-6 Respondents 1 & 2 in MCOP No. 1335/10

(7th and 8th in MCOP No respondents herein remained exparte before the Tribunal. Hence, summons to 7th and 8th respondents may be dispensed with)

1.Senniappan
2.Ranjitha
3.Leelakrishnan
4.Maridurai
5.Swathi Hatcheries ... Respondents in CMA No.139/2014/ Respondents 1 & 2 in MCOP No. 1336/10

(4th and 5th respondents herein remained exparte before the Tribunal. Hence, summons to 4th and 5th respondents may be dispensed with)

PRAYER: Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicle Act, 1988 against the judgment and decree dated 31.10.2012 made in M.C.O.P.No.1335 & 1336/2010 on the file of the Motor Accidents Claims Tribunal, II Additional District and Sessions Court, Tiruppur.

For Appellant in both CMAs :Mr.S.Manohar

For Respondents in both CMAs:Mr.Ma.P.Thangavel for R1 to 6
R7 and 8 exparte
R4 and 5 exparte

COMMON JUDGMENT

Assailing the impugned award passed by the Motor Accident Claims Tribunal cum II Additional District and Sessions Court, Tiruppur, made in MCOP Nos.1335 of 1336 of 2010 dated 31.10.2012, the New India Assurance Company has brought these Civil Miscellaneous Appeals questioning the quantum of compensation.

2.Mr.S.Manohar, learned counsel appearing for the appellant/Insurance Company in both appeals would submit that although it is a fatal accident taking away the life of both rider and pillion rider of the two wheeler bearing Registration No.TN-39-S-2163 on 06.11.2010 at about 07.15 p.m., when their vehicle was hit by another two wheeler bearing Registration No.TN-39-AH-8847, the Tribunal found fault with the offending vehicle and consequently saddled the liability on the appellant/Insurance for payment of compensation to both the claimants in their claim petitions.

3.In CMA No.138/2014, the Tribunal has unreasonably fixed a sum of Rs.8,000/- as the notional monthly income of the deceased Ganesan, though there being no sufficient and acceptable documents or evidence to prove the employment of the deceased. He would further submit that the Tribunal has erred in deducting only 1/4th of the income towards personal expenses and the Tribunal has to apply proper multiplier, instead of multiplier '15', and thus, awarded a sum of Rs,6,12,000/- towards loss of dependency to the family. However, while coming to the head 'loss of consortium', the Tribunal has awarded only a sum of Rs.50,000/- to the wife of the deceased and awarding another sum of Rs.50,000/- each for six claimants towards love and affection and another sum of Rs.6,000/- towards funeral expenses are unreasonable and therefore, the same has to be interfered with.

4.Learned counsel for the appellant/Insurance Company would further submit that in the case of MCOP No.1336/2010, when the deceased Muthulakshmi, who was wife of the first claimant and mother of the claimants died in the accident, the Tribunal has fixed a sum of Rs.5,100/- as her notional income although it was pleaded in the claim petition that the deceased was agricultural coolie and was earning a sum of Rs.6000/- as monthly income without any proof of documentary evidence and after deducting 1/3 towards her personal expenses and appling the multiplier '15, the Tribunal has awarded a sum of Rs.6,12,000/- towards loss of dependency. Since the first claimant's wife died, a sum of Rs.50,000/- has awarded towards loss of consortium and also another sum of Rs.50,000/- each to the claimants and a sum of Rs.6,000/- has awarded towards funeral expenses.

5.Replying to the above contentions, learned counsel for the respondents/claimants would submit that the Insurance Company has not come forward against the negligence or liability in both the Civil Miscellaneous Appeals and only with regard to quantum of compensation.

6.In CMA No.138 of 2014, the sole breadwinner of the claimants' family viz., Ganesan died and as a result, his wife and other family members specifically pleaded that the deceased was doing agriculture and has claimed a sum of Rs.10,000/- towards his monthly income. But the Tribunal has fixed only a sum of Rs.8,000/-. After deducing 1/4th towards his personal expenses of the deceased, since there are six claimants in their family viz., three unmarried daughters, the Tribunal has miserably failed to add 30% of his actual salary towards future prospects. Again the Tribunal has committed yet another mistake in not awarding a reasonable amount under the head ' loss of consortium' and a sum of Rs.50,000/- alone has been awarded and therefore, as per the ratio laid down by the Hon'ble Apex Court in the case of Rajesh and others vs. Rajbir Singh and others reported in 2013 (2) TN MAC 55 (SC), which has categorically mentioned that Rs.1 lakh could be awarded under the head 'loss of consortium', a sum of Rs.1 lakh each may be awarded to six dependents under the head loss of love and affection, instead of awarding the amount at Rs.50,000/- each. The Tribunal has awarded a sum of Rs.6,000/- alone towards funeral expenses. Therefore, this Court may award a sum of Rs.25,000/- towards funeral expenses.

7.Similarly, in CMA No.139/2014, the learned counsel for the respondents/claimants would submit that a sum of Rs.5,100/-

alone has been taken as notional monthly income of the deceased / wife of the first claimant and after deducting 1/3rd towards her personal expenses, a sum of Rs.3,400/- alone has been taken and applying the multiplier '15', it has determined a sum of Rs.6,12,000/- towards loss of dependency. Since the Tribunal has miserably failed to add 30% of his actual salary towards future prospects, as per the ratio laid down by the Hon'ble Apex Court in the case of Santosh Devi v. National Insurance Company Ltd. and others reported in 2012 (2) TN MAC 1 (SC) and the decision of the the Hon'ble Apex Court in Rajesh and Others v. Rajbir Singh reported in 2013 (2) TN MAC 55 (SC), an addition of 30% of actual salary towards future prospects has to be awarded, as the deceased was doing agricultural coolie work and earning a sum of Rs.6,000/- as monthly income and without accepting the same, the Tribunal has fixed a sum of Rs.5,100/- as notional income and deducted 1/3rd towards her personal expenses and as a result, loss of dependency has been completely reduced. No amount has been awarded towards future prospects and as already submitted, under the head loss of love and affection and consortium, a sum of Rs.50,000/- each alone has been awarded. Therefore, a reasonable amount has to be given under both these heads.

8.As rightly mentioned by the learned counsel for the respondents/claimants herein that on 06.11.2010 at about 7.15 p.m., both the deceased were riding in a two wheeler bearing Registration No.TN-39-S-2163 and the same was hit by the offending vehicle bearing Registration No.TN -39-AH-8847, due to which, both the deceased lost their life, as a result, the Tribunal has rightly saddled the liability on the Insurance Company having insurance coverage of the offending vehicle and such issue is challenged in the present appeal with regard to quantum of compensation.

9.In CMA No.138 of 2014, the claimants have not proved that the deceased was agricultural coolie and was earning a sum of Rs.10,000/-. Since, no documentary evidence was produced, the Tribunal has fixed a sum of Rs.8,000/- as notional monthly income of the deceased. This Court, considering the fact that if the deceased had worked as agricultural coolie, he would have earned Rs.300/- per day, is unable to find fault with the Tribunal in fixing a sum of Rs.8,000/- as notional monthly income. While coming to the adoption of multiplier, it has been contented by the learned counsel for the appellant that the Tribunal has applied the multiplier '15' instead of '14'. In the present case, the deceased died at the age of 45, while serving as agricultural coolie and hence, the multiplier '14' should be adopted, as per the ratio laid down by the Hon'ble Apex Court in the above said case of Sarla Verma, which reads as under:

> "42.We therefore hold that the multiplier to be used should be as mentioned in Column (4) of the table above which starts with an operative multiplier of 18, reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years."

Since the learned Tribunal has not made any addition towards future prospects, this Court is inclined to add 30% of the actual salary towards future prospects, as per the ratio laid down by the Hon'ble Apex Court in Sarla Verma (Smt.) and others vs. Delhi Transport Corporation and another reported in 2009 (6) SCC 121 and accordingly the same is added. On this score, the loss of dependency is arrived as follows:

Rs.7,800/- (Rs.10,400- 2,600/-) x 12 x 14 +1/4 - 30/100=Rs.13,10,400/-

10.Since the Hon'ble Apex Court in the case of Rajesh and others vs. Rajbir Singh and others reported in 2013 (4) TN MAC 44 (SC), has held that a sum of Rs.1,00,000/- should be fixed towards loss of love and affection, in the present case, as the deceased was 45 years and there are three unmarried daughters viz., Sindhu aged about 16 years, Vinitha aged about 14 years and Shalini aged about 9 years, who lost their father in a crucial time, it would be unreasonable to fix a sum of Rs.50,000/- towards loss of love and affection. Therefore, by applying the ratio laid down by the Hon'ble Apex Court in the case of Rajesh and others vs. Rajbir Singh and others, a sum of Rs.1,00,000/- each is to be awarded to the claimants under the above said head. Accordingly, Rs.1,00,000/- each is ordered to be paid under the head 'loss of love and affection'.

11.Learned Tribunal has awarded only a sum of Rs.6,000/- towards funeral expenses. This Court is inclined to fix Rs.25,000/- under the above head and the same is hereby fixed. In CMA No.138 of 2014, the modified compensation as per the above discussions are as follows :

Sl.No.	Head	Modified Award Amount
1.	Loss of dependency	Rs.13,10,400/-
2.	Loss of consortium	Rs. 1,00,000/-
3.	Loss of love and affection	Rs. 6,00,000/-
4.	Funeral Expenses	Rs. 25,000/-
5.	Total	Rs.20,35,400/-

12.In CMA No.139 of 2014, the Tribunal has fixed only a sum of Rs.5,100/- as notional income of the deceased as against Rs.6,000/- claimed in the petition. However, keeping in mind, the respondents 1 to 3/claimants, viz., husband and two children i.e. One married daughter and unmarried son, the Tribunal has made deduction 1/3rd towards her personal expenses and the loss of dependency works out to Rs.3,400/- (Rs.5100-2700) x 12 x 15 = Rs.6,12,000/-. As the wife of the first claimant died, the Tribunal ought to have fixed a sum of Rs.1,00,000/- towards loss of consortium, however, a sum of Rs.50,000/- alone has been fixed by the Tribunal. Therefore, this Court is inclined to award a sum of Rs.1,00,000/- instead of Rs.50,000/- towards loss of consortium. Similarly, as per the ratio laid down by the above said case as stated supra, this Court is inclined to award a sum of Rs.1,00,000/- each towards loss of love and affection to the claimants and a sum of Rs.25,000/- has been fixed towards funeral expenses instead of Rs.6,000/- awarded by the Tribunal.

Sl.No.	Head	Modified Award Amount
1.	Loss of dependency	Rs.6,12,000/-
2.	Loss of consortium	Rs. 1,00,000/-
3.	Loss of love and affection	Rs. 3,00,000/-
4.	Funeral Expenses	Rs. 25,000/-
5.	Total	Rs.10,37,000/-

13.In the light of the above modification, both these Civil Miscellaneous Appeals are disposed of. No costs. Consequently, connected M.Ps. are closed.

14.It is represented by the learned counsel for the appellant/Insurance company that the appellant has already deposited 50% of the award amount to the credit of both MCOP Nos.1335 and 1336 of 2010 on the file of the II Additional

District and Sessions Judge, Tiruppur. Therefore, the appellant/Insurance Company is hereby directed to deposit the entire modified award amount within a period of four weeks from the date of receipt of a copy of this order, less the amount has already been deposited. On such deposit, it is open to the claimants in both appeals, to move an application to withdraw the same, as ordered by the Tribunal.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal,
   II Additional District and Sessions Court, Tiruppur.

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

+2cc to Mr.Thangavel, Advocate, S.R.No.69090 & 69089
+2cc to Mr.Manohar, Advocate, S.R.No. 69129 & 69730

SKV(CO)
RS(25/01/2017)

C.M.A. Nos.138 & 139 of 2014
&
C.M.P.Nos.5223 & 5224 of 2016