

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED : 28.09.2016

CORAM:

THE HON'BLE MR. JUSTICE S. MANIKUMAR
AND
THE HON'BLE MR. JUSTICE N.ATHINATHAN

C.M.A.No.2081 of 2016
C.M.P.No.15170 of 2016

United India Insurance Co. Ltd.
Chidambaram

Now at:

United India Insurance Co. Ltd.,
Motor Third Party Claims Hub
1st Floor, 46, Jawaharlal Nehru Street
Puducherry - 605 101

... Appellant/3rd
Respondent

Vs.

1.Baghiyam
2.Kanakasabai @ Kanakasabapathy
3.Sivasubramanian ... Respondents 1 to 3/Petitioners
4.Kumar
5.G.Velayutham ... Respondents 4 & 5/Respondents 1 & 2

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree, dated 13.06.2014 made in M.A.C.T.O.P.No.46 of 2010, on the file of the Motor Accidents Claims Tribunal (Sub Court), Chidambaram.

For Appellant : Mr.P.Sankaranarayanan

For Respondents : Mr.T.Gopinath

JUDGMENT

(delivered by S.MANIKUMAR, J.)

Quantum of Rs.12,69,000/- with interest, at the rate of 7.5% per annum, from the date of claim, till realisation, awarded to parents and younger brother of the deceased, is the only challenge in this appeal, on the ground that the Tribunal, has erred in fixing a higher income of Rs.10,000/-, for the purpose of computing loss of contribution to the family.

2. The deceased was a bachelor. Therefore, a further contention has been made that the Tribunal ought to have deducted 50% of the income towards the personal and living expenses of the deceased. Mr.P.Sankaranarayanan, learned counsel for the insurance company/appellant herein, drew the attention of this court, to the proceedings of the District Collector, Chennai District dated 31.05.2016, wherein, the District Collector, has fixed a sum of Rs.320/-, per day for Fitter Class I & II.

3. Before the Tribunal, mother of the deceased has adduced evidence as PW1 stating that, at the time of accident, her son Karthikeyan was aged about 24 years and by running a Studio and doing Video coverage, her son earned Rs.15,000/- per month. However, there is no evidence of having any Photo Studio. She has marked Ex.P7 - Mark sheet for Fitter qualification, Ex.P8 - Fitter course completion certificate, Ex.P9 - Fitter Training Certificate and Ex.P11 - Apprenticeship appointment order. Claimants/respondents have also marked Ex.P16 - Salary Certificate and Ex.P18 - Identity Card, to show that the deceased was a Member of the Press Club. In addition to the above, one Mr.Sivaraman, has been examined as PW2, to support the case of the respondents/claimants that, at the time of accident, the deceased was a Reporter for the newspapers Malai Malar and other dailies. He has deposed that the deceased was engaged as a Photographer in Jaya TV and Malai Malar daily. He was also a News Reporter and thus from the above said engagement, earned Rs.10,000/- per month. Having regard to the documentary evidence produced by the claimants/respondents and the oral testimony of PW2-Sivaraman, by observing that though the deceased had studied Fitter course, he had chosen an avocation of his choice and earned income Rs.300/- per day. For the above said reasons, the Tribunal has fixed the monthly income of the deceased as Rs.9,000/-.

4. Having regard to the age of the deceased 24 years, the Tribunal applied multiplier '17'. Thereafter, deducted 1/3rd towards the personal and living expenses of the deceased and computed the loss of contribution to the family as Rs.12,24,000/- (Rs.9,000 x 12 x 17 x 1/3). That apart, the Tribunal has awarded a sum of Rs.10,000/- each to the parents and younger brother, under the head loss of love and affection. A sum of Rs.10,000/- has been awarded for funeral expenses. A sum of Rs.5,000/- has been awarded for transportation. Altogether, the Tribunal has awarded Rs.12,69,000/- with interest, at the rate of 7.5% from the date of claim till deposit.

5. Though Mr.P.Sankaranarayanan, learned counsel for the appellant sought for reduction in the monthly income of the

deceased, having regard to the oral and documentary evidence considered by the Tribunal for determining the monthly income, we are not inclined to reduce the same. There is no error in the application of multiplier. A sum of Rs.18,36,000/- has been arrived at by the Tribunal and 1/3rd deduction has been made. Loss of contribution has been worked out to Rs.12,24,000/-. Taking it for granted that there is an error in deducting 1/3rd towards the personal and living expenses of the deceased, instead of 50% as contended, the loss of contribution to the family works out to Rs.9,18,000/-. A sum of Rs.10,000/- each, awarded towards loss of love and affection to the parents and younger brother is very less. If Rs.1,00,000/- each, is awarded to the parents and Rs.50,000/- is awarded to the brother of the deceased under the head loss of love and affection, the same works out to Rs.2,50,000/-.

6. The quantum of Compensation of Rs.10,000/- awarded under the head, funeral expenses, is less. On the aspect of quantum of compensation, under the head, funeral expenses, the Hon'ble Supreme Court in Rajesh and others Vs. Rajbir Singh and others reported in 2013(3) CTC 883, held as follows:

"21. We may also take judicial notice of the fact that the Tribunals have been quite frugal with regard to award of compensation under the head 'Funeral Expenses'. The 'Price Index', it is a fact has gone up in that regard also. The head 'Funeral Expenses' does not mean the fee paid in the crematorium or fee paid for the use of space in the cemetery. There are many other expenses in connection with funeral and, if the deceased is follower of any particular religion, there are several religious practices and conventions pursuant to death in a family. All those are quite expensive. Therefore, we are of the view that it will be just, fair and equitable, under the head of 'Funeral Expenses', in the absence of evidence to the contrary for higher expenses, to award at least an amount of Rs.25,000/-."

Therefore, this court, is of the view that a sum of Rs.25,000/- ought to have been awarded. Under the head Transportation, a sum of Rs.5,000/- awarded, is less. The Tribunal ought to have awarded at least Rs.10,000/- under the head transportation. There is no award under the head loss of estate. The Tribunal should have considered that the sudden demise of an earning member of the family also results in the loss of estate. Therefore, under the said head, the Tribunal ought to have awarded a sum of Rs.10,000/-. The deceased, at the time of accident, was aged about 24 years. The Tribunal ought to have considered adding some amount under the head future prospects. If 50% of the amount awarded, as loss of contribution to the family is taken for future prospects, it

will approximately come to Rs.4,60,000/-. There is no award under the head conventional damages and that a sum of Rs.5,000/- ought to have been awarded. If re-working is done, the compensation amount would be more:

7. In the light of the above discussion, we are of the view that the quantum of compensation of Rs.15,69,000/-, awarded to the respondents herein/claimants, cannot be said to be a bonanza or windfall, warranting any reduction. Civil Miscellaneous Appeal is dismissed.

8. The appellant-Insurance Company, is directed to deposit the award amount, with proportionate accrued interest and costs, less the statutory deposit, to the credit of M.A.C.T.O.P.No.46 of 2010, on the file of the Motor Accidents Claims Tribunal (Subordinate Court) Chidambaram, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the respondents/claimants are permitted to withdraw the same, by making necessary applications, before the Tribunal. The Tribunal is further directed to affix a copy of this judgment in the Notice Board of the Tribunal mentioning the name of the parties to MCOP No.454 of 2012, and the disposal of the appeal filed by Oriental Insurance Co. Ltd., Tiruppur. The Tribunal is further directed to disburse the compensation amount, only after due verification and identity of the claimants/respondents herein. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

asr

To

The Motor Accident Claims Tribunal,
(Sub Court),
Chidambaram.

+1cc to Mr.P.Sankaranarayanan, Advocate, S.R.No.55569

+1cc to Mr.T.Gopinath, Advocate, S.R.No.55348

C.M.A.No.2081 of 2016

MP(CO)

CA(17/11/2016)

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