IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 23.09.2016

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

C.M.A. No.1963 of 2016
and
C.M.P.No.14239 of 2016

The United India Insurance Company Ltd.,
No.38, Anna Salai,
Chennai - 2. ... Appellant/3rd Respondent

Vs.

1.J.Shanthi

2.J.Aravind (minor)

3.J.Hemanand (minor)

4.Yasodha

5.Veera Baghu

6.N.Anbalagan

7.S.Shailaja
[Minor respondents 2 and 3 are represented by their next friend and mother 1st respondent]
... Respondents/Petitioners & 1st & 2nd Respondents

Prayer: Appeal under Section 173 of the Motor Vehicles Act, 1988 against the Decree and Judgment passed by the Motor Accidents Claims Tribunal (II Court of Small Causes), Chennai in MCOP No.5727 of 2004 dated 13.08.2014.

For Appellant : Mr.A.Dhiraviyanathan

For Respondents : Mr.J.Ramkumar (for R1 to R5)

JUDGMENT

(Order of the Court was made by S.MANIKUMAR, J.)

Challenge in this appeal is to the quantum of compensation of Rs.26,00,000/- with interest, at the rate of 7.5% per annum, from the date of claim till the date of deposit, awarded to the legal representatives of the deceased aged about 37 years, at the time of accident, on the grounds that income of Rs.10,000/- per month, determined by the tribunal, is on the higher side. Sum of Rs.2,00,000/- ordered under the head loss of estate, is also questioned.

2. Supporting the prayer to set aside the impugned judgment and decree and inviting the attention of this Court to the judgment of Hon'ble Apex Court in Amrit Bhanu Shali & Others Vs. National Insurance Co.Ltd. & Others, reported in 2012(2) TNMAC 321 (SC), Mr.A.Dhiraviyanathan, learned counsel for the appellant submitted that the tribunal, ought to have taken the income mentioned in Ex.P15, IT cash receipts and Ex.P16, copy of Income Tax (Saral), as the basis for computing the loss of contribution to the family.

3. Per contra, Mr.J.Ramkumar, learned counsel appearing for the respondent/claimants submitted that the deceased, was a owner of a tourist vehicle bearing Regn.No.TN04J4722, a EICHER Medium Goods vehicle bearing Regn.No.TN056937 and also a Chicken Carrier van bearing Regn.No.TN05J9201. He submitted that the deceased was holding a chicken stall licence, issued by the Corporation of Chennai and was a chicken wholesale and retail seller. According to him, when the respondents/claimants, have marked Ex.P7, chicken stall licence, Ex.P11, appreciation letter for repayment of loan, Ex.P15, Income Tax Cash receipts and Ex.P16, Income Tax Saral Forms, the tribunal ought to have fixed a higher monthly income and computed the loss of contribution to the family. Notwithstanding the above, it is his further contention that even taking for granted that there is some excess award under the head loss of estate, still the same can be adjusted, against other heads, and thus prayed to sustain the award.

4. Heard the learned counsel for the parties and perused the material on record.

5. As per the version of the legal representatives / claimants, at the time of accident, the deceased was aged 37 years. According to them, he was a wholesale and retail chicken seller. Besides, as a financier, he was engaged in lending money. To prove the avocation that he was a chicken seller, the

respondents/claimants, have marked Ex.P7, Chicken Stall licence issued by the Corporation of Chennai. Upon perusal of Ex.P8, copy of the RC book of the vehicle bearing Regn.No.TN05H6937, Ex.P9, copy of permit and cover note for the vehicle bearing Regn.No.TN05J9201 and Ex.P14, delivery note for the vehicle bearing Regn.No.TN04J4722, the claims tribunal has recorded that the deceased was a owner of Eicher Medium goods vehicle, bearing Regn.No.TN05H6937, APE Chicken carrier bearing Regn.No.TN05J9201 and a tourist vehicle bearing Regn.No.TN04J4722. Upon perusal of Ex.P11, the claims tribunal has also recorded Ex.P10, an appreciation letter for repayment of loans, Ex.P12, was issued acknowledging the post dated cheques issued to Cholamandalam Investments and Finance Company Limited, Ex.P15, IT Cash receipts from 1999 to 2003 and Ex.P16, copy of Saral for the assessment year 2003-04. Thus, giving credence to the documentary evidence adduced by the respondents/claimants, the claims tribunal has determined the income as Rs.1,00,241/- and added Rs.4,629/- as the income, from other sources. Gross total income determined by the tribunal is Rs.1,04,870/-. The tribunal has also recorded that under Ex.P16, the deceased has paid IT of Rs.7,970/- for income of Rs.1,04,870/- The tribunal has taken note of Ex.P16, Income Tax Saral form, for the assessment year 2003-04. The has tribunal fixed the monthly income as Rs.10,000/-.

6. The accident has occurred on 11.06.2004. When the income from avocation has been fixed as Rs.1,00,241/- in our considered view, the tribunal has committed an error in taking a meagre sum of Rs.4,629/- as income from other sources. The tribunal has failed to consider that the deceased had a tourist vehicle and would have earned income from operating the said vehicle.

7. In the light of the above discussion, this Court is not inclined to countenance the submission of the learned counsel for the appellant-United India Insurance Company Limited for reduction in income and consequently, loss of contribution to the family or to reduce any amount from loss of estate, awarded to the legal representatives of the deceased. The Civil Miscellaneous Appeal is dismissed. No costs.

8. Consequent to the dismissal of the appeal, the appellant-Insurance Company, is directed to deposit the entire award amount with proportionate accrued interests and costs, less the amount already deposited, to the credit of MCOP No.5727 of 2004, on the file of the Motor Accidents Claims Tribunal (II Court of Small Causes), Chennai, within a period of four weeks from the date of receipt of a copy of this order.

9. The share of the minors/respondents 2 and 3, shall be deposited in any one of the Nationalised Banks in fixed deposit under the reinvestment scheme initially for a period of three years. The interest accruing on the share of the minors shall be paid to the 1st respondent/mother of the minors once in three months, till they attain majority. On such deposit being made, except the minors, the respondents/claimants are permitted to withdraw the award amount as apportioned by the tribunal, by making necessary applications. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

The Registrar,
Motor Accidents Claims Tribunal,
II Court of Small Causes,
Chennai.

+1cc to Mr.A.Dhiraviyanathan, Advocate, S.R.No.54338
+1cc to Mr.J.Ramkumar, Advocate, S.R.No.54361

C.M.A. No.1963 of 2016

PA(CO)
CA(19/10/2016)