IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01.12.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A. No.2067 of 2016

1.S.Santhi
2.K.Sankaran .. Appellants/Claimants

Versus

1.M.R.Govindan
2.ICICI Lombard General Insurance Co. Ltd.,
85/86, Wall Tax Road, Park Town,
Chennai-600 003. ..Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 20.09.2012 made in M.C.O.P.No.1268/2010 on the file of the Motor Accidents Claims Tribunal, (XVII Additional District and Sessions Judge), Chennai-1.

For Appellants : Mr.U.M.Ravichandran

For Respondents: Mr.D.Venkatachalam for
Mr.P.H.Manoj Pandian for R2

J U D G M E N T

The Civil Miscellaneous Appeal has been filed, challenging the correctness of the impugned award dated 20.09.2012 made in M.C.O.P.No.1268/2010 on the file of the Motor Accidents Claims Tribunal, (XVII Additional District and Sessions Judge), Chennai-1.

2.It is the case of the claimants that on 13.02.2010 at about 15.00 hours, when the deceased as pillion rider and his friend one Sankara Narayanan was riding the motor cycle bearing Registration No.TN-20-AC-5900 from Kattupakkam Royal Garden to Kovalam and he attempted to overtake the Tipper Lorry bearing Registration No.TN-22 BY 3699, the driver of the lorry drove the same in a rash and negligent manner and dashed against the motor cycle and thus, caused fatal accident to the rider and pillion rider of the motor cycle. According to the claimants, the accident had happened due to the rash and negligent driving of the driver of the lorry.

3.Learned counsel appearing for the claimants would submit that the Tribunal after fixing Rs.7,500/- as a notional monthly income of the deceased, has committed an error in making addition towards future prospects and therefore, as per the ratio laid down by the Hon'ble Apex Court in the case of Sarla Verma and others vs. Delhi Transport Corporation and another reported in 2009 (2) TN MAC 1 (SC), 50% of the actual salary of the deceased has to be added towards future prospects. He would further submit that when the law is settled in adopting the multiplier, the Tribunal after fixing the age of the deceased at 21 years, without considering the age of the deceased for adopting the multiplier, has applied the wrong multiplier 13 by considering the age of the mother of the deceased and therefore, the multiplier should be adopted is 18, as per the above said case. Hence, the impugned order needs interference.

4.Opposing the above contentions, learned counsel appearing the Insurance Company/second respondent would submit that the Tribunal in awarding various heads, namely, funeral expenses, loss of love and affection, and transportation, has awarded the reasonable amount and therefore, the impugned order does not call for interference.

5.This Court finds merit on the submissions made by the learned counsel for the claimants. A perusal of the finding of the Tribunal would show that the Tribunal has added Rs.2,500/- towards future prospects of the deceased. It is not known how the Tribunal has arrived the said amount and added the same towards future prospects. When the law is clear from Santosh Devi v. National Insurance Company Ltd. and others reported in 2012 (2) TN MAC 1 (SC), which is reiterated in Rajesh and others vs. Rajbir Singh and others reported in 2013(2) TN MAC 55 (SC) that 50% of the actual salary of the deceased can be added towards future prospects, if the deceased is below 40 years, this Court finds no more infirmity in adding 50% of the actual salary of the deceased towards future prospects, as the age of the deceased having been fixed at 21 years by the Tribunal and thus, the same is hereby added.

6.It is seen that the Tribunal by taking the age of the mother of the deceased, has wrongly adopted the multiplier 13, without considering the age of the deceased. This Court is inclined to apply the multiplier 18 by considering the age of the deceased and thus, the same is hereby applied. The amount awarded under the other heads are confirmed as it is.

The modified compensation as per the above discussions are as follows:

Loss of income (7500+3750=11250/2=5625x12x18)	...	Rs.12,15,000/-
Funeral Expenses	...	Rs. 5,000/-
Loss of love and affection	...	Rs. 30,000/-
Transportation	...	Rs. 5,000/-
Total	...	Rs.12,55,000/-

7.With the above modifications, the appeal is allowed for the reasons mentioned above. No costs.

8.The claimants are entitled to the enhanced compensation amount with interest at the rate of 7.5% per annum. The Insurance Company/second respondent is directed to deposit the entire compensation amount including the enhanced amount, after deducting the amount that has already been deposited by them, if any, with proportionate interest at the rate of 7.5% per annum, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the claimants are permitted to withdraw the same, in the ratio awarded by the Tribunal, on making proper application.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The XVII Additional District and Sessions Judge
(The Motor Accidents Claims Tribunal,),
Chennai-1.

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

+ 1 cc to Mr.Ravichandran, Advocate SR.70909

C.M.A. No.2067 of 2016

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