IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 21.09.2016

CORAM

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

C.M.A. No.2137 of 2016
and CMP No.15399 of 2016

The New India Assurance Co. Ltd.,
Rep. by its Manager, Unit 121404, 11th Floor,
New India Centre, 17/A, Cooperage,
Mumbai, Maharashtra - 400 001 .. Appellant/ 2nd Respondnet

Vs.

1. Shavithri
2. Ethirajulu Naidu ..Respondents 1 & 2/ Claimants
3. C.Vijayakumar
4. The New India Assurance Co. Ltd.,
   Rep. by its Manager,
   Mayura Complex, Bhavani .. Respondents 3 & 4/
   Respondents 1 and 4

[3rd respondent remain exparte and 4th respondent is given up]

Prayer: Appeal under Section 173 of the Motor Vehicles Act, 1988 against the Decree and Judgment passed by the Motor Accidents Claims Tribunal (4th Additional District Judge), Erode at Bhavani, in MCOP No.436 of 2012 dated 27.08.2015.

For Appellant : Mr.M.Krishnamoorthy

For Respondents : Mr.C.Kulandaivel (for R1 & R2)

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

With the consent of the learned counsel for the parties, appeal is taken up for hearing.

2. Both the learned counsel for the parties submitted that the only challenge in this appeal is quantum of compensation and the application of multiplier.

3. In the accident which occurred on 27.07.2012, one Ramesh died. Parents filed MCOP No.436 of 2012 before the MACT [Sub Judge], Bhavani, claiming compensation of Rs.50 Lakhs. According to them, at the time of accident, the deceased aged about 26 years, and a post graduate. He was working as Cash Manager, HR Department, TN Mercantile Bank Limited, Bangalore and earned Rs.20,000/- per month.

4. To prove educational qualifications and employment, parents/claimants have marked Ex.P6, 10th standard marksheet (original), Ex.P7, 12th standard marksheet (original), Ex.P8, Provisional Certificate (B.Sc.) issued by Anna University, Ex.P10, Conduct certificate, Exs.P11 and P12, Certificates for completion of Medical Transcription Course , Ex.P13, Certificate for completion of Spoken English Training, Ex.P14, Certificate of Diploma in Computer Application, Ex.P15, M.B.A., marksheet, Ex.P16, ID card issued by Alagappa University [Distance Education], Ex.P16, Participation certificate issued by SSM College, Ex.P18, certificate issued by TNM Bank for completion of training, Ex.P19, Appointment order issued by TNM Bank, Ex.P20, ID card issued by TNM Bank, Ex.21, Order issued by TNM Bank for joining at Kumudi Branch, Ex.P22, Probation declaration Order issued by issued by TNM Bank, Ex.P23, Appreciation Letter issued by TNM Bank, Ex.P24, Salary slips (series of 7) and Ex.P25, Incentive paid receipts upto 31.03.2012, have been marked.

5. Accepting the oral and documentary evidence, the tribunal fixed the monthly income as Rs.15,942/- and deducted 10% towards income Tax. But applied multiplier of '32' for the purpose of computing the loss of contribution. Thereafter, deducted 1/3 towards the personal and living expenses of the deceased and arrived at a sum of Rs.36,73,045/-. In addition to the above, the tribunal has awarded Rs.2,00,000/- under the head loss of love and affection., Rs.10,000/- for transportation, Rs.10,000/- for funeral expenses and Rs.5,000/- for conventional damages to articles. Altogether, the tribunal awarded compensation of Rs.38,98,045/-, with interest, at the rate of 7.5% per annum from the date of claim till the date of deposit.

6. At the time of accident, the deceased was aged 26 years and having regard to the remaining period of service, the tribunal, has applied '32' multiplier, for the purpose of computing the loss of contribution, an error which requires rectification. Both the learned counsel for the parties, submitted that, as per the decision in Sarla Verma and Others Vs. Delhi Transport Corporation, reported in 2009 ACJ 1298, the proper multiplier to be applied for the age group of persons between 26 and 30 is '17'. Income of Rs.15,942/- can be rounded off to Rs.16,000/-. As the deceased was employed in a bank, we are of the considered view that the tribunal ought to have awarded compensation under the head future prospects.

7. Therefore, following the decisions of the Hon'ble Supreme Court in Santosh Devi Vs. National Insurance Co. Limited, reported in 2012 (2) TN MAC 1 (SC), Rajesh & Others Vs. Rajbir Singh & Others, reported in 2013 (2) TN MAC 55 (SC) and Munna Lal Jain & Another Vs. Vipin Kumar Sharma & Others, reported in (2015) 6 SCC 347, this Court is inclined to add

50% of the last drawn income, towards future prospects. Income for the purpose of computing the loss of contribution to the family, works out to Rs.24,000/- (Rs.16,000/- + 50% of the same i.e. Rs.8,000/-). The annual income is Rs.2,88,000/-. Standard rate of income tax, at the time of accident is 10%. After deducting income tax, the annual income for the purpose of computation is Rs.2,59,200/-. Parents are the only claimants. Deceased was a bachelor and therefore, as per the decision in Sarla Varma's case [cited supra], 50% ought to have been deducted towards the personal and living expenses of the deceased. If that is done, income for the purpose of computing the loss of contribution works out to Rs.1,29,600/-. Applying '17' multiplier, loss of contribution to the family works out to Rs.22,03,200/-.

8. Perusal of the award shows that the tribunal has awarded a lesser compensation under the head funeral expenses. At this juncture, we take on record, what the Hon'ble Supreme Court in Rajesh's case, has said as regards funeral expenses, at paragraph No.21, which is reproduced hereunder.

> “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/-.”

9. In the reported case, the accident occurred on 05.10.2007, whereas, in the case on hand, the accident has occurred on 27.07.2012. Considering the escalation in the cost, and in the light of the above judgment, we deem it fit to award Rs.25,000/- under the head funeral expenses. Compensation awarded under the other heads, is reasonable. In the light of the revised application of multiplier, the compensation due and payable to the legal representatives of the deceased, works out to Rs.24,43,200/- and the same is apportioned as hereunder.

Loss of contribution to the family	:	Rs.22,03,200/-
Loss of love and affection	: Rs.	2,00,000/-
Funeral expenses	: Rs.	25,000/-
Transportation	: Rs.	10,000/-
Conventional Damages to articles	:s.	5,000/-

10. In the light of the above, compensation of Rs.38,98,045/- awarded by the tribunal, is reduced to Rs.24,43,200/-. Interest awarded by the tribunal, is sustained. The Civil Miscellaneous Appeal is allowed in part. No costs.

11. Consequently, 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.436 of 2012, on the file of the Motor Accidents Claims Tribunal (4th Additional District Judge), Erode District at Bhavani, within a period of six weeks from the date of receipt of a copy of this order. On such deposit being made, the respondents/claimants are permitted to withdraw the same, by making necessary applications, before the Tribunal. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

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To

Motor Accidents Claims Tribunal,
4th Additional District Judge,
Erode District at Bhavani.

1 cc to Mr.M.Krishnamoorthy, Advocate, Sr. 54448
1 cc to Mr.C.Kulandaivel, Advocate, Sr. 54302

C.M.A. No. 2137 of 2016

KGK (CO)
kk 15/11