IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.09.2016

CORAM:

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

C.M.A.No.2164 of 2016
and
C.M.P.No.15587 of 2016

M/s.Royal Sundaram Alliance Insurance Company Ltd.
Rep. by its Manager
No.46, Whites Road
Chennai - 600 014 .. Appellant/2nd respondent

Vs.

1.Tmt.Lakshmi
2.Saranya (minor)
3.Saraswathi (minor)
Respondents 2 and 3 Minors
rep. by mother & NF 1st respondent
4.Vetrivel Sundaresan
5.Chinnavan
6.Kantha .. Respondents/1 to 3
Petitioners/ Respondents 1,3 & 4

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree of the Motor Accident Claims Tribunal (Special Subordinate Judge), Tirupattur dated 23.9.2013 dated MCOP No.751 of 2013.

For Appellant :Mr.N.Vijyaraghavan
For Respondents 1 to 3 :Mrs.M.Malar

JUDGMENT
(made by S.MANIKUMAR, J.)

Quantum of compensation of Rs.23,06,000/-, with interest, at the rate of 7.5% from the date of claim, till deposit, awarded to the legal representatives of the deceased, is the only challenge in this civil miscellaneous appeal. Therefore, there is no need to advert to the aspect of negligence and liability.

2. Short facts leading to the appeal are that, in the accident which occurred on 8.8.2010, Murugan, bread winner of the family, aged about 26 years, and worked as a Electricity Board tower line worker in a Gulf country, for four years, and

returned to India, died. According to the legal representatives, prior to death, he had worked in a Gulf country for four years. According to them, on return, he earned Rs.25,000/- per month. To support the avocation of the deceased Murugan, respondents/claimants have marked Ex.P8-Original passport, Ex.P9-Western Union Money Transfer Receipt, Ex.P10 dated 5.9.2010, xerox copy of the police clearance certificate. Having regard to the oral testimony of PW1, wife and considering the above exhibits, the Tribunal fixed the monthly income of the deceased as Rs.12,000/- per month. Age of the deceased has been determined as 26 years. The Tribunal applied split multiplier, and deducted 1/4th towards the personal and living expenses.

3. Having regard to his employment in Gulf, the Tribunal fixed Rs.15,000/- for that period, and on return to India, taking note of notional wage of Rs.400/- per day, fixed the income as Rs.12,000/- per month. For the employment for five years period in Gulf, the Tribunal has applied 17 multiplier. For the remaining period on return to India, the Tribunal has adopted multiplier 12. Loss of dependency, for the first five years has been computed, as Rs.9,00,000/- i.e. Rs.15,000/- x 12 x 5. Loss of dependency, on return to India, has been computed as Rs.9,000 x 12 x 12 = Rs.12,96,000/-. Thus the Tribunal, by applying split multiplier method, arrived at the loss of contribution to the family as Rs.21,96,000/-. In addition to the above, Tribunal has awarded Rs.50,000/-, towards loss of estate, Rs.10,000/-, under the head loss of consortium, Rs.10,000/- each to the minor children, and Rs.10,000/- to the parents and Rs.10,000/- has been awarded for funeral expenses. Thus, the Tribunal has awarded a sum of Rs.23,06,000/- with interest, at the rate of 7.5% per annum as hereunder:

1. Loss of dependency	:	Rs.21,96,000/-
2. For loss of estate	:	Rs. 50,000/-
3. For loss of consortium to 1st petitioner	:	Rs. 10,000/-
4. For loss of love and affection (petitioners 1&2 and R3&4 @ Rs.10,000x4)	:	Rs. 40,000/-
5. For Transportation and Funeral expenses	:	Rs. 10,000/-
		Rs. 23,06,000/-

4. Being aggrieved, Royal Sundaram Alliance Insurance Co. Ltd. is on appeal, with a prayer to set aside the award. Supporting the prayer sought for, Mr.Vijayaraghavan, learned for the appellant submitted that the Tribunal has erred in awarding a higher compensation and that the Tribunal has failed to appreciate that mere marking of the passport or

receipt for money transfer of any amount, cannot be the basis for the conclusion that the deceased was employed in Gulf and earned Rs.20,000/- per month, and further contended that the Tribunal has erred in making an assumption that the deceased would have earned such income, for the next five years and thereafter, on return would have earned earn Rs.12,000/- per month, in India and that the conclusion of the Tribunal, on the above said reasons, are nothing but imaginary. While testing the correctness of the award, we are of the view that the method in computing the overall compensation by the Tribunal, is not the determinative factor. But, the endeavour of the court should be to consider as to whether the overall compensation, represents, 'just compensation'. What is just compensation and reasonable compensation, is explained in the following judgments:

4.1. In R.D.Hattangadi v. M/s.Pest Control (India) Pvt. Ltd., reported in AIR 1995 SC 755, wherein, the Apex Court held as follows:

> "In its very nature whenever a Tribunal or a Court is required to fix the amount of compensation in cases of accident, it involves some guess work, some hypothetical consideration, some amount of sympathy linked with the nature of disability caused. But all the aforesaid elements have to be viewed with objective standards."

4.2. In yet another decision in Divisonal Controller, KSRTC v. Mahadeva Shetty and another reported in (2003) 7 SCC 197, in Paragraph 12, the Supreme Court held that,

> "Broadly speaking, in the case of death the basis of compensation is loss of pecuniary benefits to the dependents of the deceased which includes pecuniary benefits to the dependents of the deceased which includes pecuniary loss, expenses etc. and loss to the estate. The object is to mitigate hardship that has been caused to the legal representatives due to the sudden demise of the deceased in the accident. Compensation awarded should not be inadequate and should neither be unreasonable, excessive, nor deficient. There can be no exact uniform rule for measuring the value of human life and the measure of damage cannot be arrived at by precise mathematical calculation; but amount recoverable depends on broad facts and circumstances of each case. It should neither be punitive against whom claim is decreed nor should it be a source of profit for the person in whose favour it is awarded."

At Paragraph 15 of the said judgment, the Supreme Court has held that,

> "Measure of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and

circumstances, and attending peculiar or special features, if any. Every method or mode adopted for assessing compensation has to be considered in the background of "just" compensation which is the pivotal consideration. Though by use of the expression "which appears to it to be just", a wide discretion is vested in the Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness, and non-arbitrariness. If it is not so, it cannot be just."

5. Though Mr.N.Vijayaraghavan, learned counsel for the appellant/insurance company suggested for re-working of compensation, for which there was no objection by the learned counsel for the respondents/claimants, this court is not inclined to do so, for the reason that when the quantum of compensation arrived at by the Tribunal is just and reasonable, we are of the view that there is no need for this court to exercise, as suggested by the insurance company. Compensation awarded is sustained.

In the result, the appeal is dismissed confirming the judgment and decree passed by the Motor Accident Claims Tribunal (Special Subordinate Judge), Tirupattur, dated 23.9.2013 made in MCOP No.751/2013. The appellant herein is directed to deposit the entire sum of Rs.23,06,000/- awarded as compensation along with interest, at the rate of 7.5% per annum with cost to the credit of MCOP No.751/2013 on the file of the Motor Accident Claims Tribunal (Special Subordinate Judge), Tirupattur. 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.751 of 2013, and the disposal of the appeal filed by Royal Sundaram Alliance Insurance Co. Ltd. The Tribunal is further directed to disburse the compensation amount, only after due verification and identity of the claimants/respondents herein. We wish to state that, there should be strict compliance. The share of the minors 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 guardian once in three months, till they attain majority. Deposit should be made within six weeks from the date of receipt of a copy of this judgment. No costs. Consequently, the connected civil miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

To:

The (Special Subordinate Judge),
Motor Accident Claims Tribunal
Tirupattur.

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krd 12/11

C.M.A.No.2164 of 2016