IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.03.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUDHAKAR
and
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

C.M.A.No.2126 of 2015
and M.P.No.1 of 2015

The Branch Manager
M/s.Iffco Tokio General Insurance Co.Ltd.,
O.K.S.Building, College Road
Near IT Office, No.5,College Road
2nd Cross, Tiruppur. ... Appellant/2nd Respondent

vs.

1.Nirmala
2.Dhinesh(Minor)
3.Harish (Minor)
Respondents 2 and 3 Minors
Rep By Mother & N.F.1st respondent.
4.Palanathal
5.V.Somasundaram ....Respondents/Petitioners/1st Respondent

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree in M.C.O.P.N.1700 of 2013 dated 10.03.2015 on the file of Motor Accidents Claims Tribunal, I Additional District Court, Tiruppur.

For Appellant : Mr.N.Vijayaraghavan
For Respondents : Mr.Ma.Pa.Thangavel
for R1 to R4
R5-Served.

JUDGMENT
(Judgment of the Court was delivered by R.SUDHAKAR,J.)

The Iffco Tokio General Insurance Company is on appeal challenging the award dated 10.03.2015 passed in M.C.O.P.No.1700 of 2013 on the file of the Motor Accidents Claims Tribunal (I Additional District Court), Tiruppur.

2. It is a case of fatal accident. On 03.10.2013 at about 12.00 hours, when the deceased P.Eswaran was going in a Two-Wheeler bearing Reg.No.TN-39-AT 2295 from north to south in the Vengamedu to Angeripalayam Road, near V.K.Government High

School, a two-wheeler bearing Reg.No.TN-39-BE-9887 driven in a rash and negligent manner dashed against the deceased, as a result, P.Eswaran sustained fatal injuries and died on the same day. The claimants, who are wife, two minor sons and mother of the deceased have filed a claim petition for compensation for a sum of Rs.60,00,000/-. According to the claimants, the deceased was working as Production Manager in Ticson Texs, Vengamedu, Angeripalayam, and was earning a sum of Rs.27,500/- per month.

3. In support of the claim, the wife of the deceased was examined as P.W.1; one Balakrishnan was examined as P.W.2 and one Kuppusamy was examined as P.W.3 and Ex.P-1 to Ex.P-13 were marked, the details of which are as follows:-

Ex.No.	Details
P1	Copy of FIR
P2	Copy of Altered FIR
P3	Postmortem Certificate
P4	Death Certificate
P5	Legal Heir Certificate
P6	Medical Bills
P7	Pay Slips
P8	Copy of Income Tax Returns Filed.
P9	Salary Account Statement
P10	Salary Account Statement
P11	Authorisation letter
P12	Registration Certificate
P13	Certificate showing Payment of VAT by the company.

On behalf of the Insurance Company, no witness was examined and no exhibit was marked before the Tribunal.

4. The Tribunal based on the oral evidence of the witnesses and the F.I.R., came to conclusion that the rider of the two-wheeler who came in vehicle bearing Reg.No.39 BE 9887 was rash and negligent and was responsible for the accident and consequently liability was fixed on the appellant/Insurance Company, since the vehicle belonging to the fifth respondent herein was insured with the appellant, to compensate the claimants. On this issue, learned counsel for the appellant has no serious objection with regard to the finding of the Tribunal as no material has been placed to come to a different conclusion from that of the conclusion arrived by the Tribunal.

5. Based on the oral and documentary evidence, the Tribunal granted the following amounts as compensation with interest at 7.5% per annum:-

Sl. No.	Head	Amount granted by the Tribunal
1	Loss of pecuniary benefits to the dependents of the deceased by adopting multiplier 13	Rs.37,18,260/-
2	Loss of consortium	Rs. 1,00,000/-
3	Loss of love and affection (Rs.50,000/- each)	Rs. 2,00,000/-
4	Funeral expenses	Rs. 25,000/-
5	Medical expenses	Rs. 4,57,980/-
	Total	Rs. 45,01,240/-

6. The only serious objection raised is with regard to the grant of compensation towards Loss of Income to the dependents, since the Tribunal arrived at the pecuniary loss by fixing salary of the deceased at Rs.27,500/- per month.

7. Insofar as the compensation towards loss of income is concerned, based on Exs.P.9 and P.10, Salary Account Statement credited to City Union Bank and also based on the evidence of P.W.3-Kuppusamy, who stated that the deceased was earning Rs.27,500/- per month, in which Rs.17,500/- was credited through Bank Account and Rs.10,000/- through cash, the Tribunal fixed the income of the deceased at Rs.27,500/- per month. The Tribunal, after deducting 1/3 towards the personal expenses of the deceased, by taking the age of the deceased at 47 years, also added 30% towards future prospects and applied 13 multiplier and arrived at the pecuniary loss at Rs.37,18,260/-.

8. Primarily it is contended by the counsel appearing for the Insurance Company that Ex.P.10-Salary Account Statement clearly shows that the deceased salary was only Rs.17,500/- as on 09.03.2013 and there is no proof for income of Rs.10,000/- received in cash by the deceased. The learned counsel also placed reliance on the Income Tax Returns filed by the deceased under Ex.P.8, wherein, the annual income was shown as Rs.1,34,000/-.

9. The learned counsel appearing for the claimants submits that the deceased earned Rs.10,000/- as brokerage commission charges.

10. On going through the documents placed before this court and the submissions made on both sides, it is seen that though the deceased earned some amounts other than salary in brokerage commission, the said income would not be a constant one but a variable earning.

11. Therefore, keeping these facts in mind, we are inclined to determine the income of the deceased at Rs.20,000/- per month as against Rs.27,500/- fixed by the Tribunal as there is no material to support that the deceased constantly earned Rs.10,000/- per month as cash. However, we sustain the 30% future prospects added to the pecuniary loss to the dependents. Thus, the pecuniary loss is calculated as follows:-
Rs.20,000/- x 12 x 13 + 30% - 1/3 =Rs.27,04,104/-

12. Accordingly, the compensation awarded by the Tribunal stands modified as follows:

Sl. No.	Head	Amount granted by the Tribunal	Amount granted by this court
1	Loss of pecuniary benefits to the dependents of the deceased by adopting multiplier 13	Rs.37,18,260/-	Rs.27,04,104/-
2	Loss of consortium	Rs.1,00,000/-	Rs. 1,00,000/-
3	Loss of love and affection (Rs.50,000/- each)	Rs.2,00,000/-	Rs. 2,00,000/-
4	Funeral expenses	Rs.25,000/-	Rs. 25,000/-
5	Medical expenses	Rs.4,57,980/-	Rs. 4,57,980/-
	Total	Rs.45,01,240/-	Rs. 34,87,084/-

13. There is no serious objection in respect of the amounts granted under other conventional heads or the interest granted at 7.5% per annum.

14. Accordingly, the Civil Miscellaneous Appeal is partly allowed as follows:-

(i) The award of the Tribunal is reduced to Rs.34,87,084/- from Rs.45,01,240/-

(ii) The interest granted by the Tribunal at 7.5% per annum is confirmed.

(iii) The first claimant/Nirmala is entitled to get Rs.25,87,084/-; 2^{nd}, 3^{rd} and 4^{th} claimants viz., two minor children and mother of the deceased are entitled to get Rs.3,00,000/- each. As far as the minor's share is concerned, the same shall be deposited in a Nationalised Bank until they attain the age of majority.

(iv) This Court by order dated 23.09.2015 directed the appellant/ insurance company to deposit the entire award amount along with accrued interest and costs.

(v) The claimants 1 and 4 are permitted to withdraw the modified award amount as ordered and apportioned by this Court as above.

(vi) The appellant insurance company is at liberty to withdraw the excess amount deposited before the Tribunal.

(vii) There will be no order as to costs in this appeal.

(viii) Consequently, connected miscellaneous petition is closed.

nvsri

Sd/-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

1. The I Additional District Judge,
   (Motor Accidents Claims Tribunal)
   Tiruppur.

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

+ 1 cc to Mr.M.B.Gopalan, Advocate SR 20364

+ 1 cc to Mr.Ma.Pa.Thangavel, Advocate SR 19486

gj(co)
prk8/6

C.M.A.No.2126 of 2015