IN THE HIGH COURT OF JUDICATURE OF MADRAS
DATED: 22.09.2016
CORAM:
THE HON'BLE MR. JUSTICE S. MANIKUMAR
AND
THE HON'BLE MR. JUSTICE N.AUTHINATHAN

C.M.A.No.2165 of 2016
C.M.P.No.15588 of 2016
(C.M.A.Sr.No.30158 of 2015)

The Divisional Manager,
Reliance General Manager Co. Ltd.,
Puducherry. ... Appellant /2nd Respondent

Vs.

1. Vasuki
2. Minor Abinaya
3. Minor Abinash
(Minors are represented by their mother, 1st respondent)
4. Kaliammal ...Respondents1to 4/Petitioner
5. P.Ganesh ... Respondent NO.5/ 1st Respondent

The Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act against the judgment and decree, dated 11.09.2014 made in M.C.O.P.No.854 of 2010, on the file of the Motor Accidents Claims Tribunal (III Addl. District Judge) Pondicherry.

For Appellant : Mr.S.Arun Kumar

JUDGMENT

(Judgment of this Court was delivered by S.MANIKUMAR, J.)

Quantum of Rs.25,00,000/- with interest at the rate of 7.5% per annum, from the date of claim, till realisation, awarded to the legal representatives, is the challenge in this appeal, and in particular, the determination of monthly income of the deceased at Rs.12,000/-, for the purpose of computing the loss of contribution to the family.

2. PW.1, wife of the deceased has claimed that the deceased, aged 34 years, was working as a Driver in a Co-

operative Agricultural Bank and earned Rs.15,000/- per month. Supporting her version, PW.1 has examined PW.3, Muthu, Senior Clerk-cum-Cashier of the Co-operative Bank and on her behalf, he has marked Ex.P11 - Salary Certificate issued by the Manager, Co-operative Bank, Korkady, Puducherry, Ex.P12 - Attendance Register, Ex.P13 - Authorisation Letter and Ex.P14 - Identity Card of PW.3. Upon perusal of the same, the Tribunal noticed that as per Ex.P11 - Salary Certificate, the daily income of the deceased was Rs.400/- and therefore, fixed Rs.12,000/- as the monthly income of the deceased, for the purpose of computing the loss of contribution to the family.

3. Avocation and earning is proved by adducing oral and documentary evidence. To provide food, shelter, clothing, education and to meet out the basic necessities and regular expenditure, such as payment of electricity charges, water tax and other incidental expenses, determination of Rs.12,000/- per month, in the year 2009, for computing the loss of income, cannot be said to be without any basis, and in our view, it is just and reasonable.

4. After deducting 1/4th towards the personal and living expenses of the deceased, the Tribunal has applied 16 multiplier, to the age of the deceased, 34 years, and computed Rs.25,92,000/- (Rs.12,000/- x 12 x 16) towards loss of contribution to the family. That apart, the Tribunal has awarded Rs.25,000/- towards loss of consortium, Rs.30,000/- for loss of love and affection, Rs.10,000/- towards loss of estate and Rs.10,000/- towards funeral expenses. Altogether, the Claims Tribunal has awarded Rs.26,67,000/- with interest, at the rate of 7.5% per annum. As the claim made by the legal representatives of the victim was for Rs.25,00,000/-, the Claims Tribunal restricted the compensation at Rs.25,00,000/-.

5. 'Consortium' as per the Best v. Samuel Fox reported in 1952 AC 716 means, "Duty owned by a wife to her husband and vice versa, companionship, love and affection, comfort, mutual services, sexual intercourse, etc." Consortium is not a pecuniary loss. It is certainly a conventional damage awarded to a widow, who has lost her husband. In Rajesh and others v. Rajbir Singh and others reported in 2013(3) CTC 883, the Hon'ble Apex Court, while observing that at least a sum of Rs.1 Lakh has to be awarded to the widow, for loss of consortium, held as follows:

> "In legal parlance, 'Consortium' is the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual

relations with his or her mate. That non-pecuniary head of damages has not been properly understood by our Courts. The loss of companionship, love, care and protection, etc., the spouse is entitled to get, has to be compensated appropriately. The concept of non-pecuniary damage for Loss of Consortium is one of the major heads of award of compensation in other parts of the world more particularly in the United States of America, Australia, etc. English Courts have also recognized the right of a spouse to get compensation even during the period of temporary disablement. By Loss of Consortium, the Courts have made an attempt to compensate the loss of spouse's affection, comfort, solace, companionship, society, assistance, protection, care and sexual relations during the future years. Unlike the compensation awarded in other countries and other jurisdictions, since the legal heirs are otherwise adequately compensated for the pecuniary loss, it would not be proper to award a major amount under this head. Hence, we are of the view that it would only be just and reasonable that the Courts award atleast Rupees one lakh for Loss of Consortium."

In the case on hand, the Claims Tribunal has awarded Rs.25,000/- only, towards loss of consortium.

6. Quantum of Compensation of Rs.10,000/- awarded under the head, funeral expenses, is less. On the aspect of quantum of compensation, under the head, funeral expenses, the Hon'ble Supreme Court in Rajesh and others Vs. Rajbir Singh and others reported in 2013(3) CTC 883, held as follows:

"21. 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/-."

7. Legal representatives of the deceased, in particular, minor children have lost the love and affection of their father. In Rajesh v. Rajbir Singh reported in 2013 (2) TNMAC 55, the

Hon'ble Apex Court has awarded Rs.1,00,000/- each to the legal representatives of the deceased, towards the loss of love and affection. However, in the case on hand, the Claims Tribunal has awarded only Rs.30,000/- towards loss of love and affection to the minor children and aged mother, which is less. There is no award towards transportation and damages to clothes and articles.

8. Quantum of compensation of Rs.25,00,000/-, awarded to the claimants, cannot be said to be a bonanza or windfall, warranting any reduction. In the light of our discussion, the Civil Miscellaneous Appeal is dismissed. The appellant-Insurance Company, is directed to deposit the award amount, with proportionate accrued interest and costs, less the statutory deposit, to the credit of M.C.O.P.No.854 of 2010, on the file of the Motor Accidents Claims Tribunal (III Addl. District Judge) Pondicherry, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the respondents 1 and 4/claimants are permitted to withdraw the same, by making necessary applications, before the Tribunal. 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. No costs. Consequently, connected Miscellaneous Petition is also closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

skm

To
1.The Motor Accident Claims Tribunal,
(III Addl. District Judge) Pondicherry.

2.The Section Officer Vernacular Records
High Court, Madras-104

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