IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2016

CORAM:

THE HON'BLE Dr. JUSTICE S.VIMALA

Civil Miscellaneous Appeal No.2459 of 2015
and M.P.No.1 of 2015

The Branch Manager,
M/s. New India Assurance Co. Ltd.,
No.43-A/2 Juman Centre, Promenade Road,
Caontonment, Trichy - 1 ... Appellant/Respondent II

..vs..

1. Mrs. Kanaga
2. Mr. P.Sugachandran ... Respondents/Petitioner/Respondent I

Appeal filed under Section 173 of Motor Vehicles Act 1988, against the decree and Judgment, dated 09.01.2015 made in M.C.O.P.No.147 of 2013 on the file of the Motor Accident Claims Tribunal (Principal District Judge) at Perambalur District.

For Appellants : Mr. J.Chandran

For Respondents : Mr. V.Raghupathi, for R-1

R2 : No appearance

J U D G M E N T

As against the claim made for a sum of Rs.50,00,000/-, the award has been passed for a sum of Rs.22,50,000/-. Challenging the same, the Insurance Company has filed this Appeal, inter-alia stating that the Insurance Company can accept the liability only to the extent of Rs.10,00,000/- and it disputes the liability to the extent of Rs.12,50,000/-.

2. The Appeal pertains to the award passed in respect of T.Kathiravan, aged 26, a Civil Engineer, earning a sum of Rs.50,000/-, who died in an accident on 01.01.2012. The mother has filed the claim petition claiming a sum of Rs.50,00,000/-.

3. The Tribunal has passed the award for a sum of Rs.22,50,000/- with the breakup details, as discussed herein below.

4. The notional income of the deceased has been fixed at Rs.12,000/-. 50% has been added towards the future prospective increase in income. As the deceased was a bachelor, 50%, as normally deducted, in any other case, has not been done in this case. However, considering the fact that the claimant is the widow, aged 49, only 1/3rd was ordered to be deducted towards personal expenses. Therefore, the monthly contribution of the family was taken at Rs.12,000/-.

5. The age of the deceased was shown as 26 in the postmortem report. For the age group of 26-30, the multiplier applicable is 17. Therefore, the total loss of earnings of the family was calculated at Rs.24,48,000/-. The loss of love and affection has been awarded at Rs.22,000/-, funeral expenses at Rs.10,000/-, transport at Rs.10,000/-, loss to estate at Rs.10,000/-. Thus, the total amount of compensation was quantified at Rs.25,00,000/-. Deducting 10% towards the income tax, the balance of Rs.22,50,000/- has been awarded as the compensation to the widowed mother.

6. The main contention raised by the learned counsel appearing for the appellant / Insurance Company is that the Tribunal should have taken note of the fact that, had the deceased been alive, he would have married and in that event, his contribution would be enjoyed only by the family, consisting of his wife and children and not the mother alone and therefore, the deduction should have been only 50% even in the case of widowed mother and not 1/3rd.

7. Deduction sought for at 50%, in case of a bachelor, cannot be applied universally. As rightly pointed out by the Tribunal, when the mother is a widow naturally the son would be more conscious in spending his money and he would be interested in filling up the gap left by the father in the financial arena and therefore, the son would have spent more on the widowed mother, even after the marriage. There is a legal liability also to maintain the widowed mother. After the marriage, true that there would be some reduction in the contribution to the mother, but simultaneously the deceased would have been under the liability to maintain the wife and the children. Therefore, he would have been more cautious in spending money and he would not have spent 50% on himself and that is how, the Tribunal rightly deducted 1/3rd towards the personal and living expenses of the deceased.

8. It is needless to point out that the deduction towards the personal and living expenses depends upon the facts and circumstances of each case and in this case, rightly the

Tribunal has done so.

9. However, the income taken by the Tribunal at Rs.12,000/- is slightly higher, considering the cost of living, occupation and future prospects and the status of the deceased. Hence, considering the overall circumstances, taking an amount of Rs.11,000/- per month, as salary, would be reasonable.

10. The loss of love and affection for a son towards his widowed mother must be rated high. Therefore it must be enhanced. But, there is no basis for awarding any amount towards loss to estate. Therefore, that amount must be set-aside.

11. Thus, the award passed by the Claims Tribunal is modified and the re-structured award of compensation reads thus:-

Loss of earnings (Rs.11,000/- + 50% (Rs.5,500/-) (-) 1/3rd Personal exp. (Rs.5,500/-) : Rs.11,000/- x 12 x 17)	-	Rs.22,44,000/-
Loss of love and affection	-	Rs. 75,000/-
Funeral expenses	-	Rs. 10,000/-
Transport expenses	-	Rs. 5,000/-
		Rs.23,34,000/-
Less: Deduction of 10% towards the income tax	-	Rs. 2,33,400/-
Total amount of Compensation	-	Rs.21,00,600/-
(Rounded off)	-	Rs.21,00,000/-

12. Accordingly, the total amount of compensation payable by the appellant herein / Insurance Company to the claimant / first respondent herein is quantified at Rs.21,00,000/-, which is payable at 7.5% interest, from the date of petition till the date of deposit.

13. In the result, the Civil Miscellaneous Appeal is partly-allowed. The amount of compensation, as ordered by this Court, shall be deposited by the Insurance Company / appellant herein, less the amount already deposited, if any, along with interest at 7.5% per annum, from the date of petition till the date of deposit, within a period of four weeks from the date of receipt of a copy of this judgment. There is no liability to pay interest, if any, in respect of the default period. On such deposit being made, the Tribunal shall transfer 50% of the amount, lying in Court deposit to the Savings Bank Account of the claimant / first respondent herein, through RTGS and the balance 50% shall be deposited in any one of the Nationalized

Banks initially for a period of three years and renewable thereafter and the interest accrued thereon shall be withdrawn by the claimant directly from the Bank. No costs. Consequently, the connected MP is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

srk

To
1. Motor Accident Claims Tribunal (Principal District Judge),
   Perambalur District.
2. The Section Officer, V.R.Section, Madras High Court, Chennai 104(2 copies)

+1 CC to Mr.J. Chandran, advocate sr 73927

C.M.A.No.2459 of 2015
& M.P.No.1 of 2015

SP(11/12/2017)