IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 30.09.2016

CORAM:

THE HON'BLE MR. JUSTICE S. MANIKUMAR
AND
THE HON'BLE MR. JUSTICE N.ATHINATHAN

C.M.A. No.2311 of 2016
and
C.M.P.No.16271 of 2016

The Branch Manager
New India Assurance Company Limited
No.147, K.G.Complex, Bagalur Road
Hosur, Krishnagiri District ... Appellant

Vs.

1.Jaipriya @ Priya
2.Minor Yuvasri @ Iswarya
3.Minor Sendhil Kumaran
4.Premavathi
5.Devaraji
(Minors 2 & 3 represented by
mother and next friend 1st respondent)
6.P.Krishnappa ... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree, dated 30.4.2015 made in M.C.O.P.No.274 of 2013, on the file of Motor Accidents Claims Tribunal (District Judge), Krishnagiri.

For Appellant : Mr.N.Vijayaraghavan

For Respondents : Mukund R Pandiyan,
for R1, 4 and 5

JUDGMENT

(delivered by **S.MANIKUMAR, J.)**

Being aggrieved by the quantum of compensation of Rs.2,17,78,500/- with interest, at the rate of 7.5% per annum, from the date of claim, till realisation, awarded to the legal representatives of the deceased, New India Assurance Co. Ltd., Hosur, is on appeal, on three grounds:

1. The Tribunal has erred in fastening the liability on the insurer when the driver of the offending vehicle, namely Tractor, bearing Registration No.TN-24 Y-6995, did not possess a valid and effective driving licence, at the time of accident;

2. The Tribunal erred in deducting 1/5th towards personal and living expenses of the deceased, when the dependents are only five in number and in such circumstances, as per the decision of the Hon'ble Apex Court in ***Sarla v Delhi Transport Corporation*** reported in ***(2009) 6 SCC 121***, the Tribunal ought to have deducted 1/4th towards the personal and living expenses of the deceased; and

3. The Tribunal while computing the quantum of compensation, failed to deduct income tax.

2. However, Mr.N.Vijayaraghavan, learned counsel for the insurance company/appellant herein, has not stressed the challenge

made in the first ground as regards liability fastened on the insurance company to pay compensation and therefore, we do not advert to the same.

3. Appellant has not questioned the determination of monthly income for the purpose of computing the loss of contribution to the family, but the challenge is with regard to the method adopted.

4. As regards the second ground of challenge, material on record discloses that the bread winner of the family, aged about 35 years, a Platform Manager in Tech Mahindra, AMR Tech Park, Bangalore, died. Wife aged about 27 years, minor children aged about 7 years and 4 years respectively, and parents, have filed MCOP No.274/2013 on the file of the Motor Accident Claims Tribunal (Special District Court for Motor Accident Claims Cases), Krishnagiri, claiming a compensation of Rs.5,00,00,000/-. Dependents are five in number. As rightly contended by Mr.N.Vijayaraghavan, learned counsel for the appellant, the deduction should be only 1/4th whereas, the Tribunal has applied 1/5th.

5. The Tribunal has fixed Rs.85,000/- as monthly income, added 50% for future prospects and thereafter, computed the loss of contribution after deducting 1/5th towards personal and living expenses.

6. Perusal of the award shows that the respondents/claimants have marked Ex.P9-offer letter from Tech Mahindra, issued to the deceased and Ex.P21-Salary slip of the deceased and upon perusal of the same, the Tribunal has accepted that the salary of the deceased as Rs.86,258/-.

7. Annual income of the deceased would attract deduction of 30% of income tax. Following the judgment of the Apex Court, income tax ought to have been deducted for assessing the loss of income to the family. In the interest of the minor children and wife, the deceased would have taken some insurance policies, in his name or even in the name of others. Expenses incurred for education also would fall under exemption. Having regard to the above, instead of applying 30% reduction towards income tax, we deem it fit to apply 20% IT deduction for the purpose of assessing the loss of contribution to the family.

8. As observed, 1/4th deduction would be appropriate towards personal and living expenses of the deceased. Compensation awarded under the other heads, is not challenged.

9. In the light of re-working, after deducting income tax, as stated supra, the total compensation due and payable to the legal

representatives of the deceased is Rs.1,53,42,844/- with interest at the rate of 7.5% per annum from the date of claim, till deposit and the same is apportioned hereunder:

Monthly Income	86,258
IT Deduction 20%	69,006
Future propspects (50%) adding 34,503	1,03,509
Deduction 1/4 - deducting 25,877	77,632
Annual Income	9,31,584
Multiplier - 16	1,49,05,344
Consortium	1,00,000
Love and Affection - 2 minors and parents	3,00,000
Funeral	25,000
Transport	12,500
Total	1,53,42,844

In the result, the appeal is allowed in part. The judgment and decree of the Motor Accident Claims Tribunal (District Judge), Krishnagiri dated 30.4.2015 made in M.C.O.P.No.274 of 2013, is modified to the extent indicated above. The appellant-Insurance Company, is directed to deposit the modified amount, namely Rs.1,53,42,844/- with proportionate accrued interest and costs, less the statutory deposit, to the credit of MCOP No.274 of 2013, on the file of the Motor Accidents Claims Tribunal (District Judge), Krishnagiri, within a period of eight weeks from the date of receipt of a copy of this judgment. 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. No costs. Consequently, the connected civil miscellaneous petition is closed.

(S.M.K., J.) (N.A.N., J.)
30.9.2016

Index : Yes/No
Internet : Yes/No
asr

To

The Motor Accident Claims Tribunal,
(Special Court for Motor Accident Claims Cases), Krishnagiri

S. MANIKUMAR, J.
AND
N. AUTHINATHAN, J.

asr

C.M.A. No.2311 of 2016

30.09.2016