IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.4.2016

CORAM

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

C.M.A.No.2707 of 2015

1.Jayachithra
2.Vijay(minor)
3.Agalya(minor)
4.Ramanji ... Appellants/Petitioners

vs.

1.G.Kandasamy
2.The Oriental Insurance Co.Ltd.,
Spencer Towers, 4th Floor,
No.770A, Anna Salai,
Chennai-02 ... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the order made in M.C.O.P. No.2419 of 2008 dated 11.1.2012 on the file of Motor Accident Claims Tribunal (Chief Judge, Court of Small Causes), Chennai.

For Appellants : Mr.A.N.Viswanatha Rao

For Respondents: Mr.R.Sivakumar for R2

JUDGMENT

Being aggrieved by the award of compensation of Rs.5,57,500/-, awarded by the Tribunal in M.C.O.P.No.2419 of 2008, on the file of Motor Accident Claims Tribunal (Chief Judge, Court of Small Causes), Chennai for the death of one Shankar, in the road traffic accident on 17.6.2008, the claimants have filed this appeal, seeking enhancement of compensation.

2. Brief facts are that on 17.6.2008, at 16.45 hours, the deceased Shankar was proceeding to Kelambakkam, in a motor cycle bearing Registration No.TN-21-K-6314. When he was at Vandalur Salai, Opposite to Rajini Garden, Pudhupakkam, a Tipper Lorry, bearing Registration No.TN-21-AZ-4594, was driven by its driver in a rash and negligent manner and hit against the motorcycle of the deceased, due to which, the deceased was thrown away and

fell down on the road. He sustained grievous injuries all over his body and succumbed to injuries on the spot. The first respondent is the driver of the tipper lorry involved in the accident and the second respondent is the insurer of the vehicle. The deceased Shankar was a coolie and was earning Rs.200/- per day. Alleging that the accident was due to the rash and negligent driving of the Tipper Lorry driver, the Claimants who are the wife, the minor son, the minor daughter and the mother of the deceased have filed Claim Petition claiming compensation of Rs.10,00,000/-.

3. Denying the averments made in the Claim Petition and the manner of accident, the Insurance Company has filed the counter stating that the accident was due to the rash and negligent driving of the motorcycle by the deceased and that the Insurance Company is not liable to pay compensation to the Claimants. The Insurance Company also denied the age, occupation and monthly income of the deceased Shankar and also contended that the total compensation claimed is excessive.

4. Before the Tribunal, the 1st Claimant-Jayachitra examined herself as P.W.1. Eye-witness Munisamy was examined as P.W.2. Exs.P1 to P4 were marked. On the side of Insurance Company, no witness was examined and no document was marked.

5. Upon consideration of the oral and documentary evidence, the Tribunal has held that the accident was due to the rash and negligent driving of the Tipper Lorry driver and that directed the 2nd respondent, the Insurance Company, who is the insurer of the Tipper Lorry, to pay compensation to the Claimants. Insofar as the quantum of compensation is concerned, the Tribunal observed that the family of the deceased consists of five persons, including the deceased, namely, wife, one son, one daughter and the mother of the deceased and to maintain all of them, the deceased would have earned sufficiently, fixed the income of the deceased at Rs.4,500/- per month and after deducting one-third for his personal expenses, arrived the annual income of the deceased at Rs.36,000/-. By adopting multiplier 15, the Tribunal has calculated the loss of pecuniary benefits at Rs.5,40,000/-. Adding conventional damages, the Tribunal has awarded total compensation of Rs.5,57,500/- as under:-

Towards pecuniary loss	...	Rs.5,40,000.00
Loss of consortium	...	Rs. 5,000.00
Loss of love and affection	...	Rs. 10,000.00
Funeral expenses	...	Rs. 2,500.00
Total	...	Rs. 5,57,500.00

6. Aggrieved by the said compensation awarded by the Tribunal, the claimants are before this Court, seeking enhancement of compensation.

7. The learned counsel for the appellants has submitted that the Tribunal failed to note that the deceased was getting a sum of Rs.200/- per day and in the light of present day cost of living and considering the other facts, the Tribunal could have easily fixed the income of the deceased at Rs.6,000/- per month. He would also submit that the Tribunal erred in deducting 1/3rd of the income for personal expenses, as the number of dependents are four in this case and therefore, the Tribunal should have deducted 1/4th from the total income of the deceased, towards personal expenses. It is also submitted that the deceased was aged about 35 years at the time of accident and as such, the Tribunal ought to have taken the multiplier at 16 and not 15. The Tribunal failed to grant conventional damages substantially and the amount awarded towards love and affection is also on the lower side.

8. Heard the learned counsel on either side and also perused the records carefully.

9. The Honourable Apex Court, in the judgment rendered in Syed Sadiq V. Divisional Manager, United India Insurance Co. Ltd reported in 2014 (1) TN MAC 459 (SC), in respect of a vegetable vendor, who sustained injuries in an accident which occurred in 2008, determined Rs.6500/- as the monthly income. Taking note of the Syed's case referred to above, since the accident in this case had also occurred in the year 2008, the notional income of the deceased is fixed at Rs.5000/- and considering that the claimant herein is aged about 35 years, 50% of the income is to be added towards future prospects and accordingly, after adding 50% towards future prospects, the income of the deceased is fixed at Rs.7,500/- per month. Since there are four dependents, after deducting 1/4th towards his personal expenses, the income of the deceased is fixed at Rs.5,625/- per month (Rs.7,500/- - Rs.1,875/- = Rs.5,625/-)

10. It is seen that the accident was on 17.6.2008 and that the deceased was aged 35 years at the time of accident. As per Second Schedule to M.V. Act, for the age group of 30-35, the multiplier to be adopted is "16". Tribunal has adopted multiplier "15" based on the age of 1st Claimant-the wife of the deceased which is on the lower side. Going by Second Schedule to M.V. Act the proper multiplier to be adopted in this case is "16". Adopting multiplier "16", the loss of dependency is calculated at Rs.10,80,000/- (Rs.5,625/- x 12 x 16 = Rs.10,80,000/-).

11. Insofar as the conventional damages, the Tribunal has awarded Rs.5,000/- for loss of consortium. As stated above, at the time of accident, the 1st Claimant was aged 30 years and she has lost the company of her husband at the young age. In Rajesh and Others Vs. Rajbir Singh and Others (2013 (3) CTC 883), the Honourable Supreme Court has held that the compensation to be awarded towards loss of consortium, must not be merely a token amount but must be substantial. In Para No.20, the Hon'ble Supreme Court held as follows:-

> "20. ...... 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. .... 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 at least rupees one lakh for Loss of Consortium."

Following the ratio of the above said decision, Rs.5,000/- awarded by the Tribunal for loss of consortium is enhanced to Rs.1,00,000/-.

12. The Tribunal has awarded Rs.10,000/- for loss of love and affection. Since the Claimants 2 and 3 have lost their father at their young age at the time of accident, it would be appropriate to award Rs.1,00,000/- for loss of love and affection. Accordingly, Rs.10,000/- awarded by the Tribunal for loss of love and affection is enhanced to Rs.1,00,000/-. The Tribunal has awarded Rs.2,500/- for funeral expenses and the same is enhanced to Rs.10,000/-. In modification, the total compensation of Rs.5,57,500/- awarded by the Tribunal is enhanced to Rs.12,90,000/- as under:-

Loss of dependency	...	Rs.10,80,000.00
Loss of consortium	...	Rs. 1,00,000.00
Loss of love and affection	...	Rs. 1,00,000.00
Funeral expenses	...	Rs. 10,000.00
Total	...	Rs.12,90,000.00

The enhanced compensation of Rs.12,90,000/- is to be apportioned amongst the Claimants 1 to 4 as follows:- (i) 1st Claimant-wife is entitled to Rs.6,00,000/-; (ii) 2nd Claimant-son is entitled to Rs.3,00,000/-; (iii) 3rd Claimant-daughter is entitled to Rs.3,00,000/- and (iv) 4th Claimant-mother is entitled to Rs.90,000/-.

13. As regards the award of interest is concerned, the Tribunal has rightly awarded 7.5% p.a. from the date of claim petition, till the date of deposit. Therefore, I do not find any reason to interfere with the same and the same is confirmed. However, the 2nd respondent Insurance Company is directed to pay interest for the enhanced amount also at the rate of 7.5% from the date of petition till the date of deposit.

14. In the result, compensation of Rs.5,57,500/- awarded by the Tribunal in M.C.O.P.No.2419 of 2008, dt.11.1.2012, on the file of Motor Accident Claims Tribunal Chief Judge, Court of Small Causes, Chennai, is enhanced to Rs.12,90,000/- payable with interest at the rate of 7.5% per annum from the date of Claim Petition till the date of deposit and this appeal is partly allowed.

15. If the compensation amount as awarded by the Tribunal has already been deposited, four weeks' time is granted to the 2nd respondent Insurance Company to deposit the enhanced amount to the credit of MCOP No.2419 of 2008, on the file of the Motor Accident Claims Tribunal, (Chief Judge, Small Causes Court), Chennai and on such deposit being made, the first appellant/first claimant, fourth appellant/4th claimant are entitled to make necessary applications to withdraw the same. As far as the respective shares of the minors claimants, namely, appellant Nos.2 and 3/claimant 2 and 3 are concerned, the same shall be invested in a Nationalized Bank under fixed deposit scheme, initially for a period of one year, which shall be renewable thereafter from time to time till the minors attain majority. The first appellant / first claimant is permitted to withdraw the interest accrued therein, once in three months. As far as the amount already deposited is concerned, the appellants are directed to file necessary application before the Tribunal for receiving the same.

16. If the compensation amount as awarded by the Tribunal has not been deposited already, the Insurance Company is directed to deposit the same along with the amount now enhanced to the credit of the MCOP No.2419 of 2008, on the file of the Motor Accident Claims Tribunal, (Chief Judge, Small Causes Court), Chennai, within a period of four weeks from the

date of receipt of a copy of this order and as already stated, the appellants are directed to file necessary applications to withdraw the same.

17. With the above modification as regards compensation alone, the appeal stands disposed of and in other respects, the order of the Tribunal is confirmed. There will be no order as to costs.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//
Sub Assistant Registrar

msk
To
The Motor Accident Claims Tribunal
(Chief Judge, Court of Small Causes), Chennai

1 cc to Mr.A.N.Viswanatha Rao, Advocate, sr.27673
1 cc to M/s.R.Sivakumar, Advocate, sr.27563

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kra 05.07.2016