IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 28.03.2016

CORAM

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

C.M.A. NO.648 OF 2016
and C.M.P.No.5315 of 2016

United India Insurance Co. Ltd.,
No.45, Arcot Road, Saligramam,
Chennai - 93.
.. Appellant/Respondent -II

- Vs -

1. Ramesh
2. N.Radha
.. Respondents/Petitioners

3. S.Mohammad Meera
.. Respondent/Respondent - I

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the Award and decree dated 31.01.2014 passed by the Motor Accident Claims Tribunal (III Additional District Judge), Thiruvallur at Poonamallee, made in M.C.O.P.No.293 of 2011.

For Appellant : Mr.C.Paranthaman

J U D G M E N T
(DELIVERED BY R.SUDHAKAR, J.)

Heard the learned counsel appearing for the appellant and perused the materials placed before this Court.

2. The appellant/Insurance Company has filed the appeal challenging the Award dated 31.01.2014 passed by the Motor Accident Claims Tribunal (III Additional District Judge), Thiruvallur at Poonamallee, made in M.C.O.P.No.293 of 2011.

3. It is a case of fatal accident. On 08.02.2011 at about 11.00 a.m., when the deceased N.Bhargavaram, aged 23 years, was riding his motorcycle TVS Appachee bearing Registration No.TN 22 BS 5305 in Medavakkam Main road, opposite to Nanmangalam, a

Ashok Lelyland Tanker Lorry bearing Registration No.TAP 1221 came behind in a rash and negligent manner and dashed the vehicle of the deceased. As a result, the deceased was thrown away to the Center median of the road and died on the spot. Hence, the claimants, who are father, aged 48 years and mother, aged 43 years have filed claim petition claiming a sum of Rs.30,00,000/- as compensation. According to the claimants, the deceased was working as Assistant Systems Engineer in Tata Consultancy Service and was earning a sum of Rs.29,000/- per month.

4. In support of the claim petition, the father of the deceased was examined as P.W.1; one Muthukmar, was examined as P.W.2 and one Mr.Ramnath V.Rao was examined as P.W.3 and Exs.P-1 to P-11 were marked, the details of which are as follows:-

Ex.P-1	08.2.2011	Xerox copy of First Information Report
Ex.P-2	01.04.2011	Death Certificate
Ex.P-3	09.02.2011	Copy of Postmortem Certificate
Ex.P-4	17.9.2011	Legal heir Certificate
Ex.P-5	--	Driving Licence
Ex.P-6	17.5.2010	Appointment order
Ex.P-7	--	Salary slip
Ex.P-8	--	2nd petitioner mark list
Ex.P-9	--	B.E. Certificate
Ex.P-10	19.12.2013	Authorization letter
Ex.P-11	09.12.2013	Salary Certificate

5. On the side of the respondents, neither any witness was examined nor any document was marked.

6. The Tribunal based on the oral evidence of witnesses, the F.I.R. and also taking into account the documentary evidence that the deceased was having valid driving licence to drive the vehicle and further there being no satisfactory evidence adduced on behalf of the appellant/Insurance Company to refute the evidence as to the rash and negligent driving of the Ashok Leyland Tanker Lorry, came to the conclusion that the accident was caused due to the rash and negligent driving by the driver of the Ashok Leyland Tanker Lorry, and therefore, the liability was fixed on the appellant, since the Tanker Lorry was insured with the appellant and consequently the appellant was directed 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 at by the Tribunal. Accordingly, the Tribunal awarded compensation under the following heads:-

Loss of Dependency	-	Rs.30,12,366/- (Rs.1,17,198 x 17)
For Transportation and Funeral Expenses	-	Rs. 15,000/-
for loss of Love and affection	-	Rs. 50,000/-
Total Compensation	-	Rs.30,77,366/-

7. In all, the Tribunal awarded a compensation of Rs.30,77,366/= with interest at the rate of 7.5% from 23.3.2011, the date of the petition till the date of realization. Aggrieved by the said award, the appellant - Insurance Company is before this Court by filing this appeal.

8. Learned counsel appearing for the appellant-Insurance Company submitted that there is no proof with regard to the future prospects of the deceased and the deceased was only a trainee. He further submitted that the Tribunal has not made any deduction towards income tax deduction. Per contra, it is submitted by the learned counsel for the respondents/claimants that taking note of the age of the dependents in the family, the Tribunal had correctly awarded compensation and further the Tribunal has adopted multiplier of 17 instead of 18 and has not awarded any amount towards loss of expectation of life. He further submitted that if the deceased was alive, he would have contributed more amount to the family. Therefore, no interference is called for with the well considered finding of the Tribunal.

9. This Court has given its careful consideration to the above contentions advanced by either parties and also perused the materials available on record.

10. With regard to the contention of the learned counsel appearing for the appellant that there is no proof for future prospects and there is no deduction towards income tax, we find that the Tribunal has granted only 30% future prospects instead of 50% and had adopted 17 multiplier instead of 18 as per the decision in the case of Sarla Verma & Others V. Delhi Transport Corporation & Another reported in CDJ 2009 SC 779. In the said decision, it is held that 50% of the actual salary of the deceased can be taken towards future prospects if the age of the deceased was below 40 years. In the present case, the deceased is only 23 years and had studied B.E., which is evident from Ex.P.9. Hence, future prospects must be granted. It is seen that the Tribunal has not awarded any amount towards loss of life expectation. The assessment of damages to compensate the dependents is beset with difficulties because from the nature of things, it has to take into account many imponderables e.g., the life expectancy of the deceased and the dependents, the amount that the deceased would have earned during the remainder period

of life, the amount that he would have contributed to the dependents during that period, the chances that the deceased might have got better employment or income together. The Supreme Court in the case of Concord of India Insurance Co. v. Nirmaladevi and Ors. 1980 ACJ 55 (SC) held that determination of quantum must be liberal and not niggardly since law values life and limb in a free country 'in generous scales'.

11. Therefore, if the multiplier to be adopted at 18 and future prospects at 50% are taken into consideration, it would take care of the amount that was required to be deducted towards income tax out of the gross salary of the deceased for determining the compensation under the heading loss of dependency.

12. Accordingly, finding no merit in this Civil Miscellaneous Appeal, the same stands dismissed and the award of the Tribunal stands confirmed. Learned counsel appearing for the appellant seeks time to deposit the award amount. The appellant is granted eight weeks time to deposit the award amount, less the amount, if any deposited already, along with interest and costs. On such deposit being made, the claimants are permitted to withdraw the amount. Consequently, connected miscellaneous petition is closed. However, in the circumstances of the case, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The III Additional District Court,
Poonamallee.

2. The Record Keeper
V.R. Section
High Court, Madras.

+ 1 cc to Mr.C. Paranthaman, Advocate Sr.19028

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KS(CO)
EU 27.4.16