IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 13.06.2016

CORAM

THE HONOURABLE MR.JUSTICE T. MATHIVANAN

C.M.A.No.662 of 2011

1.N.Dhanalakshmi
2.Indumathi
3.Revathi(minor)
(minor rep. by mother & natural guardian
the first petitioner herein). ..Appellants/Petitioners

Versus

1.L.Nokki Arula Vallan
(remained ex-parte before
the Trial Court)

2.The National Insurance Company Ltd.,
No.751, Anna Salai,
Chennai-600 002. .. Respondents/Respondents

Prayer: Civil Miscellanies Appeal has been filed under Section 173 of the Motor Vehicles Act of 1988, against the Judgement and decree dated 18.10.2010 passed in M.A.C.T.O.P.No.4272 of 2001 on the file of the Motor Accident Claims Tribunal(II Judge, Small Causes Court), Chennai.

For Appellants :Mr.K.Kalai Arasan

For R2 :M/s.R.Sreevidya

JUDGMENT

Being not satisfied with the award of the Tribunal to the extent of Rs.3,71,000/-, the appellants being the claimants in the claim petition in M.A.C.T.O.P.No.4272 of 2001, stand before this Court, with this Civil Miscellaneous Appeal, seeking enhancement of compensation.

2. The appellants herein are the mother and unmarried sisters of the deceased N.Raja, who is the son of L.Nokki Arula Vallan, the first respondent in the claim petition. The father of the deceased, who is the owner of the motor cycle viz., Bajaj M -80 bearing Registration No.TN-04-W-0861 has been arrayed as the first respondent herein. On 26.07.2001 at about

10.15 p.m., the deceased N.Raja was travelling as a pillion rider in the above said motor cycle. When the motor cycle was proceeding near Peruvayal Village, Kavarapettai, Tiruvallur District, the rider of the motor cycle had driven the same in a rash and negligent manner. On account of this reason, he had lost control over the vehicle and allowed the same to hit against a culvert. Due to the said accident, the deceased had sustained serious injuries and died instantaneously on the spot.

3. At the time of accident, the age of the deceased was at 23 years. According to the claimants, he was working as Air Condition and Refrigeration Mechanic and he was also doing Electrical work and thereby earning a sum of Rs.6,000/- per mensum.

4. The second respondent/Insurance Company alone had contested the claim petition. However, on appreciation of the evidences and based on the age of the first claimant, being the mother i.e., (47 years) as on 01.01.2006, the Tribunal had assessed the pecuniary loss of the family @ Rs.3,36,000/- . The monthly income of the deceased was determined by the Tribunal @ Rs.3000/-. The Tribunal had totally awarded a sum of Rs.3,71,000/- under the following heads:

(i) Pecuniary loss	Rs.3,36,000/-
(ii) Loss of love and affection (Rs.10,000/- each)	Rs. 30,000/-
(iii) Funeral Expenses	Rs. 5,000/-
Total	Rs.3,71,000/-

5. Mr.K.Kalaiarasan, learned counsel appearing for the appellants/claimants, while advancing his arguments has pointed out that virtually, the deceased was aged about 22 years at the time of accident. However, the Tribunal had determined the age of the deceased @ 23 years. Since he was an unmarried man, the age of the mother, who is the first appellant herein, was taken into account for calculating the quantum of compensation. The first appellant's age was determined @ 42 years and the multiplier of 14 was selected. Though, the appellants had claimed that the deceased was earning a sum of Rs.6000/- per mensum, in the absence of proof, the Tribunal had proceeded to fix the monthly income of the deceased @ Rs.3000/-.

6. In this connection, Mr.K.Kalai Arasan, learned counsel has contended that since the deceased, as per the Tribunal, was aged about 23 years and determined his monthly income @ Rs.3000/-, 50% towards the future prospects ought to have been included with the monthly income but this was not done by the Tribunal. He has also argued that instead of giving 50% deduction, 1/3rd of deduction ought to have been given towards

the personal and living expenses of the deceased. The argument advanced by Mr.K.Kalai Arasan, learned counsel, cannot be brushed aside in toto.

7. A three Judge Bench of the Apex Court, in B.Kothandapani Vs. Tamil Nadu State Transport Corporation Ltd., 2011(2) TN MAC 62(SC) has observed that since the deceased was aged about 23 years i.e., below the age group of 30, the multiplier of 17 is an appropriate one. Further, for calculating the pecuniary loss of the family of the deceased, the age of his parents need not be considered because their age is unascertain and that the age of the deceased is only certain and therefore, the age of the mother of the deceased ought not to have been considered by the Tribunal. Instead, the age of the deceased alone ought to have been taken for computing the pecuniary loss of the family. Apart from this, 50% of deduction shall have to be given towards the personal and living expenses of the deceased as he was a bachelor at the time of occurrence.

8. Apart from this, as argued by Mr.K.Kalai Arasan, learned counsel, 50% of future prospects is to be taken into account and ought to have been added with the actual monthly income of the deceased.

9. According to the Tribunal, the age of the deceased was @ 23 years. The monthly income of the deceased was determined @ Rs.3000/-. 50% of the future prospects is calculated @ Rs.1500/-. Therefore, the income of the deceased per mensum comes to Rs.4500/-. The annual income of the deceased @ Rs.4500x12=54,000/-. After giving 50% deduction towards the personal and living expenses of the deceased, the remaining balance would be @ Rs.27,000/-. Since the deceased was aged about 23 years, the multiplier of 17 is the appropriate one. Accordingly, the pecuniary loss of the family comes to Rs.4,59,000/-. The Tribunal has awarded a sum of Rs.30,000/- i.e., Rs.10,000/- each, towards the loss of love and affection, but the learned counsel appearing for the appellant has submitted that since the deceased had succumbed to injuries in a road traffic accident at his tender age, the loss of love and affection might be increased to Rs.50,000/- each. Accordingly, Rs.1,50,000/- might be awarded under this head. This Court has considered the suggestion made by the learned counsel and hence a sum of Rs.1,50,000/- is granted towards loss of love and affection(Rs.50,000/- each).

10. Besides this, the Tribunal has awarded a sum of Rs.5000/- only towards funeral expenses but as suggested by both the learned counsel, this amount can be increased to Rs.25000/- under this head. Accordingly, the total compensation comes to Rs.6,34,000/-. The Tribunal had awarded a sum of Rs.3,71,000/-. This amount has been increased to Rs.6,34,000/-. Accordingly, the enhanced compensation comes to Rs.2,63,000/-.

11. It is brought to the notice of this Court that already entire award amount to the extent of Rs.3,71,000/-, was deposited and subsequently, the appellants were permitted to withdraw the entire award amount alongwith accrued interest and costs.

12. In the result, this Civil Miscellaneous Appeal is partly allowed. The second respondent/Insurance Company is directed to deposit the enhanced compensation of Rs.2,63,000/- to the credit of the claim petition in MACTOP No.4272 of 2001, alongwith interest @ 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 order. On such deposit being made, the appellants are permitted to withdraw the entire enhanced award amount without filing any formal application seeking permission. No costs.

Sd/-
Assistant Registrar(V)

//True Copy//

Sub Assistant Registrar

dn

To

The Motor Accident Claims Tribunal,
(II Judge, Small Causes Court),
Chennai.

Copy to: The Section Officer,
VR Section, High Court, Madras

+1cc to M/s.N.M. Muthurajan, Advocate, S.R.No.31985
+1cc to M/s. R. Ravichandran, Advocate, S.R.No.32608

MP(CO)
EU(26/09/2016)

C.M.A.No.662 of 2011