IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 16.11.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A. No.227 of 2014

1.Pathmavathy
2.Yeswanthi (Minor)
3.Sachin (Minor)
4.Chellammal
5.Nagappan .. Appellants/Petitioners
(Appellant 2 and 3 are minor rep. By their mother and next friend Pathmavathy.)

Versus

1.O.Veeriah
2.The Oriental Insurance Company,
No.8-1-210, P.H.Road, Opp. Distrit Court,
Chittor Andhra Pradesh,
Now at 3rd Party Claims Office,
Oriental House, No.11, Prakasam Salai,
Broadway, Chennai-108/
[The 1st respondent is set exparte in the lower court below hence notice may be dispensed with]
.. Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 28.11.2012 made in M.C.O.P.No.3322/2008 on the file of the Motor Accidents Claims Tribunal (X Additional District Judge, I/C of XIV Additional Court, Chennai.

For Appellant : Mrs.Ramya V.Rao
Mr.M.Kother Adam

For Respondents: Mr.J.Chandran for R2
R1-Ex parte before the Tribunal

J U D G M E N T

The appellants/claimants, having lost the sole breadwinner aged about 38 years claimed to have served as Manager in M.M.Traders, Vellore Branch, who succumbed to the injuries in the accident occurred on 17.06.2008, have brought this appeal, seeking enhancement of compensation from Rs.8 lakhs to a reasonable amount.

2.Learned counsel for the appellants/claimants would submit that on 17.06.2008 at about 16.45 hours, when the deceased was riding his Hero Honda motor cycle bearing Registration No.TN-09-AP-6330 towards Chittoor from Vellore, the lorry bearing Registration No.AP-03-U-2585 driven in a rash and negligent manner, hit the motor cycle. As a result, the deceased fell down and the lorry ran over the head of the deceased and he died on the spot. According to the appellants/claimants, the accident has occurred due to the rash and negligent driving of the driver of the lorry. After the accident, the FIR was registered in Cr.No.29 of 2008 on the file of Chittoor Taluk Police Station for the offence under Sections 279 and 338 of IPC.

3.The contentions of the learned counsel appearing for the appellants/claimants is that the Tribunal has failed to note the multiplier followed in Sarla Varma's case. Though the deceased has completed certificate course in Co-operative Management and also certificate in telephone Operator as evidenced by Exs.P6, P7 and P8, the Tribunal has failed to award compensation towards future prospects. Adding further, although the claimants claimed a sum of Rs.8,000/- and the Tribunal has fixed a sum of Rs.6,000/- as monthly income of the deceased, he seeks enhancement in this appeal.

4.After proving the negligence, resulting in the death of sole breadwinner of the claimants' family, in an effort to prove his employment, PW3-the employer of the deceased, has deposed in his evidence that the deceased had served as an employee in M.M.Traders, Vellore Branch and they used to give a monthly income of Rs.7,000/-. Apart from that he was also paid with batta for outstation work. On this score, the claimants were able to establish the monthly income of the deceased at about Rs.12,000/-. But the Tribunal has wrongly fixed only Rs.6,000/- and further, failed to add 50% of the actual income towards future prospects. Further, the Tribunal has awarded only a sum of Rs.20,000/- towards loss of consortium. Since the deceased was aged about 38 years and his wife was aged about 33 years at the time of accident, the Tribunal ought to have awarded a reasonable amount towards consortium. Finding merits thereof, following the decision of the Hon'ble Apex Court in Rajesh and Others v. Rajbir Singh reported in 2013 (2) TN MAC 55 (SC), this Court may award a sum of Rs.1 lakh under the head 'loss of consortium' instead of Rs.20,000/-. With regard to loss of love and affection, for the two minor children aged about 10 years and 5 years, since a meagre sum of Rs.50,000/- alone was awarded to all the claimants and a sum of Rs.10,000/- was awarded towards funeral expenses, applying the ratio laid down by the Hon'ble Apex Court in RAJESH VS RABIR SINGH reported in 2013 9 SCC 54, a suitable and just and reasonable compensation should be awarded.

5.Learned counsel for the second respondent/Insurance Company would submit that though the claimants were able to establish the monthly income of the deceased at Rs.7,000/- along with batta for outstation work which comes to Rs.12,000/- p.m., no documentary evidence was produced. Adding further, it is pleaded that although it is pleaded that the employer was examined as PW3 and in his proof affidavit, he has stated that they used to pay Rs.7,000/- as monthly income in addition to batta, which comes to Rs.12,000/-, the same was rightly rejected by the Tribunal for the reason that although the employer came and deposed in support of the claim petition, no records were produced. The claim made by the appellants that at least Rs.6,500/- should be taken as reasonable monthly income in accepting the evidence of PW3 and multiplier method has been adopted is without any merits. However, with regard to enhancement of loss of consortium and loss of love and affection, he has not raised any serious objection. Therefore, this Court has fixed reasonable compensation in the earlier paragraph.

6.While looking into the case of the claimants, the appellants are wife, two minor children and parents of the deceased.Ex.P1-FIR was registered in Cr.No.29/2008 on the file of Chittoor Taluka Police Station against the offending vehicle for the offence under Sections 279 and 338 of IPC. It is the clear case of the claimants that the accident had occurred only due to the rash and negligent driving of the lorry bearing Registration No. AP-03-U-2585. Therefore, the Tribunal, accepting the negligence on the part of the driver of the offending vehicle, on the basis of the FIR, marked as Ex.P1, fixed the liability on the offending vehicle as the insurance policy has covered the said vehicle during the period of accident.

7.While coming to the quantum of compensation, PW3-Thiyagarajan, was examined as employer and he had deposed before the Tribunal that they used to give a sum of Rs.7,000/- as monthly salary in addition to batta for his outstation work, which comes to Rs.12,000/- p.m. However, the Tribunal has taken only a sum of Rs.6,000/- as monthly income of the deceased. In view of the fact that the employer came and proved the employment of the deceased, as there is no proper and acceptable evidence, this Court following the decision of the Hon'ble Apex Court in Syed Sadiq and others vs. Divisional Manager United India Insurance Co. Ltd. reported in 2014 ACJ 627, holding that for a vegetable vendor a notional monthly income can be at Rs.6,500/- at the rate of Rs.200/- per day, in the absence of any documentary evidence, Rs.6,500/- is fixed as notional monthly income. While coming to the deduction towards personal expenses, as there are five dependents in this case, ¼th amount has to be deducted towards personal expenses. As the deceased was aged about 38 years at the time of accident and the multiplier to be adopted for the age group falls in 36-40 is '15', the Tribunal has rightly applied the multiplier '15'. Therefore, the loss of income works out to Rs.13,16,250/- [Rs.9750x12x15x3/4=13,16,250/-]. For fixation of compensation under the head 'loss of consortium and loss of love and affection, learned counsel for the appellants placed on record the judgment of the Hon'ble Apex Court in Sanobanu Nazirbai Mirza and Others v. Ahmedabad Municipal Transport Service reported in 2013(2) TN MAC 565 (SC), wherein it has been held as follows:

> 8. In view of the aforesaid fact, we have to hold that it would be just and proper for this Court to take a sum of Rs.5,000/- as the Monthly Income of the deceased having regard to the nature of job that the deceased was performing as a polisher. this Court in Judgment of Santhosh Devi v. National Insurance Co. Ltd., and Ors., 2012 (2) TN MAC 1 (SC) : 2012 (6) SCC 421, has held that an addition of 30% increase must be applied for increase in total income of the deceased over a period of time if he had been alive. Further, in the recent in Rajesh and ors. v. Rajbir Singh, 2013 (2) TN MAC 55 (SC): 2013 (6) SCALE 563, this Court while referring to the case of Santhosh Devi (supra) held that in the case of self-employed persons or persons with fixed wages, in case the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future prospects of the deceased. Keeping in view the five dependents of the deceased in the case on hand, 1/5th amount is to be deducted towards Personal Expenses. Having regard to the age of the deceased as 25, as mentioned in the Postmortem Report, which age is taken by both the Tribunal as well as the High Court, and keeping in mind the life expectancy of the deceased, multiplier of 20 must be applied to the multiplicand for the purpose of quantifying Loss of Dependency. Further, following the decision of this Court in Rajesh v. Raubir Singh (supra) Rs.1,00,000/- must be added under the head of Loss of Consortium and Rs.1,00,000/- under the head Loss of Care and Guidance for Minor children. Further, it was held by this Court in the case referred to supra that Rs.25,000/- must be awarded for Funeral Expenses as this Court has made observations in the case referred to supra that the Tribunals have been frugal in awarding the Compensation under the head 'Funeral Expenses' and hence, we award Rs.25,000/- under the head of Funeral Expenses to the Claimants/Legal Representatives.

8.Therefore following the above judgment, this Court is inclined to award a sum of Rs.1,00,000/- towards consortium instead of Rs.20,000/- awarded by the Tribunal and a sum of Rs.75,000/- each should be fixed towards loss of love and affection to the minor children and parents of the deceased and a sum of Rs.25,000/- should be fixed towards transportation and funeral expenses instead of Rs.10,000/- awarded by the Tribunal. The modified compensation as per the above discussion is as follows:

Loss of income	...	Rs. 13,16,250/-
Loss of consortium	...	Rs. 1,00,000/-
Loss of love and affection	...	Rs . 3,00,000/-
Transportation and funeral expenses	...	Rs. 25,000/-
Total	...	Rs. 17,41,250/-

9.Accordingly, the Insurance Company/second respondent is hereby directed to deposit the entire award amount with interest at 7.5% per annum, within a period of four weeks from the date of receipt of a copy of this order, less the amount has already deposited. On such deposit, the 1st appellants/1st claimant is entitled to withdraw a sum of Rs.5,41,250/-, the appellants 2 and 3/minor claimants are entitled to a sum of Rs.4,00,000/- each and in respect of minor shares, the Tribunal is directed to deposit in any one of the nationalised Banks and the 1st appellant/1st claimant, being mother of the minors, is permitted to withdraw the accrued interest once in three months, till they attain majority and in respect of appellants 4 and 5, they are entitled to withdraw a sum of Rs.2,00,000/- each on making proper application. Needless to mention the payment of additional court fee payable by the claimants to the enhanced amount.

10.Accordingly, the Civil Miscellaneous Appeal is allowed. No costs.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

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To

1.The X Additional District Judge,
I/C of XIV Additional Court,
Motor Accidents Claims Tribunal,
Chennai.

2.The Section Officer,
V.R.Section,
High Court, Madras.

C.M.A. No.227 of 2014

sr(co)
ss(25/4/2017)