IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 22.09.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A. No.1361 of 2013

1.Kavitha
2.Minor Lekha
3.Minor Priyadarshini
4.Dhanam
5.Lokiah .. Appellants

Versus

1.S.Dhanasekar

2.Reliance General Insurance Co. Ltd.,
Chennai-34 .. Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 14.08.2012 made in M.C.O.P.No.830/2011 on the file of the Motor Accidents Claims Tribunal, III Judge, (Small Causes Court), Chennai.

For Appellants : Mr.S.Udhayakumar

For Respondents: Mr.S.Arunkumar for R2
R1 - not ready in notice

J U D G M E N T

The Civil Miscellaneous Appeal has been filed by the appellants/ claimants, challenging the correctness of the impugned award dated 14.08.2012 made in M.C.O.P.No.830/2011 on the file of the Motor Accidents Claims Tribunal, III Judge, (Small Causes Court), Chennai.

2.It is the case of the claimants that on 31.12.2010, at about 22.15 hours, when the deceased riding two wheeler in Velacherry Main Road from East to West direction, a Van bearing Registration No.TNZ 4186, came in a rash and negligent manner, hit behind the two wheeler. Due to the impact, the deceased sustained head injuries, resulted in death. According to the appellants/claimants, the accident was happened due to the rash and negligent driving of the driver of the van.

3.Learned counsel appearing for the appellants/claimants would submit that when the deceased being the sole bread winner of the claimants' family consisting of wife, 2 minor children and parents, even after making a clear claim that the deceased was working as a Carpenter, earning a sum of Rs.15,000/-, learned Tribunal has fixed the notional monthly income of the deceased at Rs.4,500/- per month and has wrongly deducted 1/3rd instead of 1/4th as his personal expenses and as a result even though the right multiplier '17' was applied, the total compensation has been completely reduced. Secondly, the learned Tribunal has awarded only a meagre sum of Rs.25,000/- towards loss of consortium to the wife of the deceased, who is aged about 27 years at the time of losing her husband. Adding further, he would submit that the learned Tribunal has only awarded a total sum of Rs.40,000/- in all to the two minor children and parents towards loss of love and affection. Even under the head 'funeral expenses', only a sum of Rs.10,000/- was awarded. Therefore, the award passed by the learned Tribunal being unreasonable and unjust, the present appeal has been filed and hence the same needs enhancement.

4.Learned counsel appearing for the Insurance Company/second respondent herein would submit that a huge claim was made with regard to the monthly income stating that the deceased was working as a Carpenter and was earning a sum of Rs.15,000/- per month, without there being any evidence whatsoever either orally or documentary. Therefore, the learned Tribunal has rightly approached the case of the claimants by fixing notional monthly income at Rs.4,500/- per month, by applying the right multiplier '17'.

5.But this Court is not able to agree with the approach adopted by the learned Tribunal either in fixing notional monthly income or in making deduction of 1/3rd towards personal expenses. The learned Tribunal has fixed notional monthly income of the deceased at Rs.4,500/- in the absence of any document to prove that the deceased was working as a Carpenter and earning a sum of Rs.4,500/-. Therefore, this Court is not able to find any infirmity or error in fixing notional monthly income at Rs.4,500/- and hence the same is confirmed. While making deduction towards his personal expenses, the learned Tribunal has made a wrong deduction of 1/3rd of his income towards personal expenses instead of deducting 1/4th as per the ratio laid down by the Hon'ble Apex Court in the case of **Rajesh and others vs. Rajbir Singh and others reported in 2013 (2) TN MAC 55 (SC)**. Therefore, this Court is inclined to modify the said deduction at 1/4th and the same is modified. With regard to fixing compensation towards the loss of consortium, it has been well settled repeatedly by the Hon'ble Apex Court in the aforesaid judgment that atleast minimum Rs.1,00,000/- should be awarded. While making deduction towards personal expenses, it is relevant to extract para 20 of the said order:

> "20. ..... The loss of companionship, love, care and protection, etc., which the spouse is entitled to get, has to be compensated appropriately. The concept of non-pecuniary damage for loss of consortium is one of the major heads of award of compensation in other parts of the World, more particularly in the United States of America, Australia, etc. English Courts have also recognised the right of a spouse to get compensation even during the period of temporary disablement. 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 atleast Rs.1,00,000/- towards loss of consortium."

6.When the bread winner of the family had sustained fatal injuries and left the entire family namely his wife, 2 daughters and his parents, Rs.1,00,000/- should be fixed towards the loss of consortium in the present case. Therefore, following the ratio laid down in the case mentioned supra, this Court is inclined to fix Rs.1,00,000/- towards loss of consortium and the same is fixed.

7.With regard to the head 'loss of love and affection' to the minor children and the old parents, it is not known how the learned Tribunal has fixed Rs.40,000/- alone for all the four persons. Therefore, this Court is inclined to fix Rs.30,000/- each towards loss of love and affection and the same is fixed. With regard to the head 'funeral expenses' as held in the above said case that since the price index has gone up, a sum of Rs.25,000/- has been fixed towards transportation and funeral expenses, following the above said judgment, Rs.25,000/- is fixed towards Transportation and Funeral Expenses. The modified compensation as per the above discussion are as follows:

Pecuniary loss is calculated thus Rs.4500 x ¼ = 1125
4500-1125= 3375x12x17= Rs.6,88,500/-

Pecuniary loss	...	Rs.6,88,500/-
Loss of love and affection	...	Rs.1,20,000/-
Transportation and funeral expenses	...	Rs. 25,000/-
Loss of consortium	...	Rs.1,00,000/-
Total	...	Rs.9,33,500/-

8.Therefore, the claimants are entitled to the modified compensation amount of Rs.9,33,500/- with interest at 7.5%, as apportioned by the Tribunal.

9.It is brought to the notice of this Court that the Insurance Company has deposited the award amount as ordered by the Tribunal and the same has also been withdrawn by the claimants. Therefore, the Insurance Company/ second respondent herein is directed to deposit the balance modified 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. On such deposit, the claimants are entitled to withdraw the enhanced amount, on making proper application, as apportioned by the Tribunal.

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

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Motor Accidents Claims Tribunal,
III Judge, (Small Causes Court), Chennai.

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

+1 cc to M/s.S.Udayakumar Advocate sr 54184
+1 cc to M/s.S.Arunkumar Advocate sr 54414

ctr(co)
aa04/11/2016