

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.09.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.3476 of 2012

Branch Manager
The Oriental Insurance Company Ltd.,
AA Complex, Ist Floor
159, Kumaran Road
Tirupur

Appellant

-Vs-

1. V.Shanthi
2. Jagatheesh
S/o Venkatachalam
3. Jayanthi
D/o Venkatachalam

4. Good Way Fashions
rep.by its Partner
64, KNP, Subramani Nagar
1st Street, Pudhur Road
Tirupur

(4th Respondent is set ex parte in the lower Court. Hence, notice is dispensed)... Respondents

Memorandum of Grounds of Civil Miscellaneous Appeal under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 29.02.2012 made in M.C.O.P.No.1360 of 2010 on the file of the Motor Accidents Claims Tribunal, Additional District Judge, Fast Track Court No.5, Coimbatore at Tiruppur.

For Appellant :: Mr.R.Sivakumar

For Respondents :: Mr.Ma.P.Thangavel for R1 to R3
R4-ex parte

JUDGMENT

The Branch Manager of Oriental Insurance Company Limited, Tiruppur has brought this appeal questioning the validity of the impugned award passed by the Motor Accidents Claims Tribunal, Additional District Judge, Fast Track Court No.5, Coimbatore at Tiruppur in M.C.O.P.No.1360 of 2010 dated 29.2.2012 awarding a compensation of Rs.6,26,800/- with interest at the rate of 7.5%

per annum from the date of claim petition till the date of decree, for the loss of life of the sole breadwinner of the claimants' family, on the ground that the Tribunal has wrongly and erroneously, without even testing the veracity of the claim made by the claimants with regard to the monthly income of the deceased at Rs.7,200/-, accepted the claim and arrived at the compensation on the basis of the said income to be paid by the appellant, which is on the higher side. Again assailing the impugned award, the learned counsel for the appellant submitted that admittedly in the present case, no salary certificate whatsoever was produced by the claimants nor even the employer was examined. Therefore, when the income of the deceased was not proved by any independent witness, the fixation of Rs.7,200/- as the monthly income by the Tribunal is to be held as wrong and impermissible. He also submitted that although 1/3rd deduction was made, on the wrong fixation of the monthly income without any valid document or proof, the impugned award has to be revisited.

2. Heard the learned counsel for the respondents also.

3. This Court finds it difficult to accept the contentions of the learned counsel for the appellant. The reason is that the learned counsel for the respondents/claimants has rightly brought to the notice of this Court the relevant evidence adduced by one of the employees, namely, Krishnamoorthy, S/o Namasivaya Pillai aged about 70 years, who had worked with the deceased-Venkatachalam, deposing that he had worked along with the deceased as Security Guard and that the deceased was getting a sum of Rs.7,200/- as his monthly income. Therefore, when the claimants were able to procure one of the co-employees of the deceased, the Tribunal has carefully considered the said evidence and after accepting the genuine case of the claimants, has proceeded to fix the income of the deceased at Rs.7,200/-. The Tribunal has also rightly made the 1/3rd deduction from his salary. Even the later part of the calculation also goes to show that when the deceased was aged about 56 years at the time of accident viz., on 3.11.2010, a right multiplier has been taken as per the Schedule to arrive at the loss of pecuniary benefits. At this juncture, the learned counsel for the claimants also submitted that as per the ratio laid down by the Apex Court in Sarala Verma's case, when the deceased was aged about 56 years, the right multiplier should be '9'. But in any event, the Tribunal has not deviated from the Schedule. Therefore, this Court is not able to find fault with the fixation of the multiplier '8' by the Tribunal to arrive at the sum of Rs.4,60,800/- towards the loss of pecuniary benefits i.e., $\text{Rs.4800} \times 12 \times 8 = \text{Rs.4,60,800/-}$. Considering the facts of the case, the Tribunal has also awarded a sum of Rs.40,000/- towards loss of consortium and another sum of Rs.1,20,000/- towards loss of love and affection to the claimants. Besides a

sum of Rs.6000/- has been given towards funeral expenses. Considering the facts and circumstances of the case, this Court is not able to find the award of the Tribunal as unreasonable. Accordingly, the civil miscellaneous appeal fails and it is dismissed confirming the award of the Tribunal. It was brought to the notice of this Court that only the statutory amount of Rs.25,000/- has been deposited by the appellant insurance company. Therefore, the appellant is directed to deposit the entire award amount along with accrued interest to the credit of the M.C.O.P.No.1360 of 2010 on the file of the Motor Accidents Claims Tribunal, Additional District Judge, Fast Track Court No.5, Coimbatore at Tiruppur within a period of four weeks from the date of receipt of a copy of this order. On such deposit, it is open to the claimants to withdraw the same by moving appropriate application before the Tribunal. Consequently, M.P.No.1 of 2012 is also dismissed. No costs.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

To

1. The Motor Accidents Claims Tribunal
(Additional District Judge)
Fast Track Court No.5
Coimbatore at Tiruppur

+1 cc to Mr.R.Sivakumar, advocate,sr.52115

+1 cc to Mr.Ma.P.Thangavel, advocate,sr.52123.

ctr(co)
krd 11/11

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