IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:18.01.2016

CORAM:

THE HONOURABLE MR. JUSTICE T.RAJA

CMA.No.887 of 2006

1.Perumal
2.Balammal
3.Manjula .. Appellants/Petitioners/Claimants

-Versus-

1.Sumithra

2.The Divisional Manager,
United India Insurance Company Ltd.,
Vellore. ..Respondents/Respondents

This civil Miscellaneous appeal is filed under Section 173 of the Motor Vehicles Act 1988 against the common judgment and decree in M.C.O.P.No.732 of 2003 on the file of the Motor Accident Claims Tribunal (District Court), Tiruvannamalai dated 7.4.2005.

For Appellants : Ms.R.T.Sundari
for M/s.R.Margabandhu

For Respondents : Mr.J.Chandran for R2
No Appearance for R1

J U D G E M E N T

The claimants having aggrieved by the impugned award fixing unreasonable sum of Rs.2,02,000/- towards compensation for the loss of life of breadwinner of the claimants' family, aged about 25 years earning income as per the documents issued by the Life Insurance Corporation and marked as Exs.P.7 to P11, have brought the present appeal seeking enhancement, since the learned Tribunal has failed to allow the claim amount.

2. Learned counsel appearing for the appellants would submit that on 18.5.2003, when the deceased Jayakeerthy was riding his Hero Honda motor cycle bearing registration No.TN.25 T 3927 along with his friend Mr.Duraimurugan near Kunnathur, the driver of the offending vehicle bearing registration No. TN25 F

2525 drove the bus in a rash and negligent manner and dashed against the deceased. As a result of the accident, the deceased Jayakeerthy had sustained head injury and unfortunately died while he was taken to hospital. Thereafter, the Sub-Inspector of Police attached to Porur Police Station filed a case in Crime No.355 of 2003 implicating the driver of the offending vehicle causing accident under Sections 279,337 and 304(A) I.P.C. on the file of Judicial Magistrate, Porur.

3. The deceased was working as LIC Agent and also an income tax assessee, which has been sufficiently proved by a document marked as Ex.P7. The various proceedings issued by the LIC of India have been marked showing that the deceased was serving as LIC Agent and earning income at the time of accident. Ex.P8 issued by the LIC shows that the deceased was working as LIC Agent. Ex.P9 issued by the LIC shows that the deceased has been serving satisfactorily. In addition thereto the Income Tax Return submitted for the deceased was also marked as Ex.P10. Ex.P11 containing 16-pages shows the particulars of policy holders registered through the deceased, has been marked in support of the case of the claimants that the deceased was paid by the LIC. Therefore, the father, mother and the unmarried sister made the claim of Rs.10,00,000/- as compensation for the loss of breadwinner in their family.

4. Learned counsel for the appellant would contend that the reasonings given by the learned Tribunal to fix a sum of Rs.5,000/- as notional monthly income of the deceased were not sufficiently corroborated by the official documents issued by the LIC including Ex.P.7, the income tax return of the deceased. The learned Tribunal, completely over looking the fact that the deceased was an income tax assessee, has fixed the monthly notional income unreasonably at the low level as Rs.5,000/-. Adding further, the learned counsel appearing for the appellants would submit that after taking notional monthly income of the deceased at Rs.5,000/-, the learned Tribunal without even adopting appropriate multiplier-18 as per the principles laid down in Sarla Verma v. DTC, reported in 2009 (2) TN MAC 1 (SC), has committed yet another serious error in fixing the total compensation towards the loss of dependency.

5. Adding further he would submit that the learned Tribunal has committed yet another serious error in deducting 1/3 towards personal income instead of adding 50% towards future prospects, since the deceased was aged about 25 years as on 18.5.2003 and an unmarried bachelour. Since the deceased was unmarried at the time of accident, 50% ought to have been added from the notional monthly income and it has been completely overlooked. Adding further he would submit that the Tribunal has committed serious error in not adding 50% in the notional income towards future prospects. Adding further, he would submit that

towards loss of love and affection, nothing has been fixed as compensation by the learned Tribunal, particularly when the deceased was a bread winner of that family, that would show that the learned Tribunal has committed serious basic mistake, therefore, the impugned award awarding a sum of Rs.2,02,000/- as against the claim amount of Rs.10,00,000/- is liable to be set aside.

6. In support of submission with regard to adding 50% of the annual notional income towards future prospect, the learned counsel for the appellants relied upon a judgement of the Hon'ble Apex Court in Shashikala & others vs. Gangalakshmamma & another wherein the Apex Court while following the case of Santosh Devi vs. National Insurance Company Ltd. & others held that it would be reasonable to say that a person who is self employed or is engaged on fixed wages will also get 30% increase in his total income over a period of time and if he/she becomes victim of accident then the same formula deserves to be applied for calculating the amount of compensation. Again taking support of the judgement of the Apex Court in Rajesh and others vs. Rajbir Singh and others reported in 2013 9 SCC 54 for fixing adequate compensation towards loss of love and affection, he requests this Court to fix the compensation with another one lakh towards loss of love and affection.

7. The learned counsel appearing for the Divisional Manager, United India Insurance Co. Ltd., Vellore, would submit Rs.5,000/- fixed as notional monthly income is reasonable and acceptable, for the Official records issued by the LIC in favour of the deceased clearly show that he was getting the annual income of a small amount, which is also not regular. Therefore, no fault can be attributed to the fixation of Rs.5,000/- as notional monthly income. However, the omission by the learned Tribunal in not adopting proper multiplier is fairly conceded by him. The learned Tribunal has committed error in not applying proper multiplier-18 as per the decision laid down in the Apex Court reported in Sarla Verma v. DTC, reported in 2009 (2) TN MAC 1 (SC). In this regard, the learned counsel for the insurance company has no explanation whatsoever to support the impugned order. Yet, another error committed by the learned Tribunal was that 1/3 of the income towards personal expenses has been deducted. Again the learned counsel appearing for the Insurance Company has no explanation whatsoever as to why the learned Tribunal has forgotten to add 50% of the actual income towards future prospect. Likewise, looking into the award passed by the learned Tribunal, it is made clear that the learned Tribunal has forgotten to award any amount for loss of love and affection to the mother and unmarried sister of the deceased, when the deceased died at the age of 25 years in the accident took place on 18.5.2003.

8. Therefore, considering the error committed by the learned Tribunal, I am of the considered opinion that the impugned award is required to be properly modified enhancing suitable compensation that would be fair, proper and just to the claimants. Admittedly, in the present case, when the deceased Jayakeerthy was driving his Hero Honda motor cycle bearing registration No.TN.25 T 3927 along with his friend Mr.Duraimurugan near Kunnathur the accident had occurred on 18.5.2003 at 3.30 P.M. The driver of the offending vehicle bearing Registration No. TN25 F 2525 appeared to have driven the vehicle in a rash and negligent manner and dashed against the deceased motor cyclist causing head injury, resultantly, the deceased Jayakeerthy succumbed to injury while he was taken to the hospital. Subsequently, against the driver of the offending vehicle, a case in Crime No.355 of 2003 was filed making him liable for the offence of negligent driving.

9. Therefore, the learned Tribunal has come to the conclusion, that unfortunately the accident had occurred on 18.5.2003 only due to rash and negligent driving of the offending vehicle. Ex.P8, issued by the LIC and produced before the Learned Tribunal, would clearly show that the deceased was serving as an agent in LIC of India. A perusal of Ex.P10, income tax return of the deceased and the perusal of Ex.P11 having 16 pages showing the details of number of policy holders, prove that the deceased was an employee as an agent in LIC having received the monthly income. Thus, his income was subjected to be deducted for income tax as per Ex.P7. Therefore, in my view that the learned Tribunal ought not to have fixed Rs.5000/- as notional monthly income. On the other hand, on the basis of the income income tax return Ex.P10, supported by Ex.P11 showing that the deceased was an income tax assessee, this Court is inclined to fix a sum of R.7500/- as monthly income on the date of accident.

10. The deceased died as unmarried at the age of 25 years. Hence, he is entitled to future prospect and 50% of the income has got to be added in the actual monthly notional income. Therefore, if Rs.7500/- is taken as monthly notional income, it comes to Rs.7500 + Rs.3750 = Rs.11,250/-. Out of which, 50% is to be deducted as the deceased is an unmarried bachelour and it comes to Rs.5625/-. In this context, the correct multiplier-18 is applied as per the judgement in Sarla Verma v. DTC, reported in 2009 (2) TN MAC 1 (SC), and as such the total loss of income comes to Rs.12,15,000/-.

11. Just and reasonable compensation has to be awarded towards loss of love and affection by applying the ratio laid down in Rajesh and others vs. Rajbir Singh and others reported in 2013 9 SCC 54. The counsel appearing for the insurance company would submit that since the accident took place in

2003, the amount of Rs.50,000/- awarded towards loss of love and affection is reasonable. Agreeing with the said argument advanced by the learned counsel appearing for the insurance company, this court is inclined to award Rs.50,000/- towards loss of love and affection. Rs.2,000/- awarded towards funeral expenses is very low and hence, this Court awards Rs.20,000/- towards funeral expenses.

12. In view of the above reasonings, the total compensation is modified at Rs.12,85,000/- and the same has to be deposited along with interest at 7.5% per annum and costs from the date of the filing of the petition. The learned counsel appearing for the Insurance Company submitted that the entire amount along with interest has been already deposited. The balance modified award amount along with interest and costs is directed to be deposited within four weeks from the date of the receipt of a copy of the order. The claimants are permitted to withdraw the award amount along with interest and costs by filing appropriate application before the Trial Court.

13. With the above modification the appeal is disposed of. No costs.

vk

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1.The Motor Accident Claims Tribunal
(District Court), Tiruvannamalai.

2.The Divisional Manager,
United India Insurance Company Ltd.,
Vellore.

3. The Section Officer, V.R.Sec, High Court, Mds.

+ 1 cc to M/s.R.Margabandhu, Advocate Sr 2711

+ 1 cc to Mr.J.Chandran, Advocate Sr 2817

KR/31/3/16

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