



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.11.2016

Coram:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A(MD)No.233 of 2016

and

C.M.P(MD)No.3247 of 2016

M/s.Reliance Insurance Company Ltd.,
Sri Meenakshi Plaza,
First Floor, 80 Feet Road,
Anna Nagar, Madurai,
Through its Branch Manager.

.. Appellant/Respondent-2

-Vs-

1. M.Prema
2. M.Siva
3. M.Chitra
4. M.Pandeeswari
5. V.Kumaravel

.. Respondents/Petitioners

.. Respondent/Respondent No.1

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the fair and decreetal order dated 30.11.2015 made in M.C.O.P.No.2222 of 2014 on the file of the learned V Additional District Judge, Motor Accident Claims Tribunal, Madurai, and allow this Civil Miscellaneous Appeal.

For Appellant : Mr.S.Srinivasa Raghavan
For R-1 to R-4 : Mr.M.Thilagaraj

JUDGMENT

The appellant/second respondent has filed this Civil Miscellaneous Appeal against the Judgment and Decree, dated 30.11.2015 made in M.C.O.P.No.2222 of 2014 by the learned V Additional District Judge, Motor Accident Claims Tribunal, Madurai.

2. It is a case of the fatal accident. The accident took place on 29.08.2014 at about 3.00 p.m., in Theni to Madurai main road and the legal heirs of the deceased filed an application seeking compensation before the Motor Accidents Claims Tribunal, Madurai and the Tribunal passed an award granting compensation of Rs.11,80,000/-.



3. Challenging the award, the appellant/second respondent has filed the present appeal on the ground that the monthly income fixed by the Tribunal as Rs.9,000/- was erroneous and baseless. The monthly income was calculated without adducing any proper evidence and therefore, the monthly income fixed by the Tribunal has to be modified. The notional monthly income adopted in such cases where there are no evidences, accordingly, the monthly income has to be taken as Rs.6,000/-.

4. The second objection is that the age of the deceased was stated as 55 years in the claim application and therefore, the multiplier '11' has to be adopted as per the schedule. But, the Tribunal fixed the multiplier '13' which is erroneous and in other respects also the award amount has to be reduced.

5. The third ground raised by the appellant is that the compensation granted by the Tribunal under the heads of loss of consortium and love and affection is excessive and the same has to be reduced.

6. The learned counsel for the respondents has opposed the contention of the appellant by stating that the deceased was the owner of an agricultural land measuring 1.12.0 acres and they are earning income from and out of the agricultural land.

7. The second contention is that the age of the deceased was 48 as per the driving licence issued by the transport authorities and the driving licence which was issued by the transport authorities is taken up as per Sarla Verma's case to consider the factum of the age of the deceased was 48 years at the time of death and it was mistakenly stated as 55 years in the claim petition. The same has to be taken as per the correct date of the birth of the deceased person.

8. Thirdly, the learned counsel contended that the multiplier '13' adopted by the Tribunal was correct and in accordance with the principles laid down by the Supreme Court in Sarla Verma's case and the age of the deceased has to be taken as 48. Further the learned counsel contended that the compensation awarded under the heads of loss of consortium and love and affection, there is no error on the part of the Tribunal. In view of the fact that the deceased was survived with wife and three children and therefore, the Tribunal was rightly awarding the compensation to the respondents/claimants.

9. Considering the rival contentions of both by the learned counsel for the appellant and the respondents, this Court is of the view that the monthly income fixed by the Tribunal has to be ~~of the fact that the respondents/claimants have~~ not produced valid evidence to establish the monthly income of the deceased as Rs.9,000/-. The Tribunal had not taken into account

the agricultural land owned by the deceased, while fixing the monthly income. Because after the death, there cannot be any future loss regarding the agricultural land owned by the deceased person. Hence, the contention of the appellant has to be accepted in respect of the monthly income fixed by the Tribunal and accordingly, the monthly income of Rs.9,000/- fixed by the Tribunal is reduced to Rs.6,000/-.

10. The second point to be considered is the age of the deceased person and this Court is of the view that the driving licence is to be relied upon in view of the fact that which was issued by the Transport Authority by the State Government and the oral statement and oral application through the wife of the deceased need not be considered. In view of the fact that the age of the deceased was stated as 48 years in his driving licence, this Court is not inclined to interfere in respect of age and accordingly, 48 years is to be taken into account as the age of the deceased.

11. In respect of third point, the amount of compensation fixed for loss of consortium and love and affection, this Court is not inclined to consider the same, in view of the fatal accident and the claimants are the wife and three children of the deceased and therefore this Court has not inclined to modify the compensation awarded by the Tribunal under the head of loss of love and affection.

12. Consequently, the Civil Miscellaneous Appeal is partly allowed and the compensation fixed in respect of the loss of pecuniary benefits, this Court is inclined to modify as follows:-

Head of claim	Amount claimed (Rs)	Amount awarded (Rs)	Amount modified (Rs)
Loss of pecuniary benefits	32,00,000	10,53,000	7,02,000

Loss of pecuniary benefits are revised from Rs.10,53,000/- to Rs.7,02,000/- and the multiplier adopted is Rs.6,000/- X 12 X $\frac{13}{4}$. In all other respects, the compensation awarded by the Tribunal is confirmed and accordingly, the total compensation of Rs.11,80,000/- is revised to Rs.8,29,000/-(Rupees Eight Lakhs and Twenty Nine Thousand only).

13. The learned counsel for the appellant represents that the entire award amount has been deposited along with interest and the respondents/claimants are permitted to withdraw their entire award amount with interest by filing necessary applications before the Tribunal through R.T.G.S., and the balance amount shall be



withdrawn by the appellant / Insurance Company. No costs.
Consequently, connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar(CSI)

WEB COPY/True Copy/

Sub Assistant Registrar

pmu

To

The V Additional District Judge,
Motor Accident Claims Tribunal, Madurai.

+1cc to Mr.S.Mohamed Kadhar, Advocate Sr.No. 70228

JAM/20.01.2017/GSV-SV/ 4p-3c

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