BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED :21.12.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MRS. JUSTICE J.NISHA BANU

C.M.A.(MD)No.402 of 2016
and
C.M.P.(MD).No.5499 of 2016

The Branch Manager,
The Oriental Insurance Company Ltd.,
Parimalam Complex,
11, E.V.N. Road, 2nd Floor,
Erode. ...Appellant/2nd Respondent

Vs.

1.Chandra
2.Naveen Kumar
3.Radha
4.Mariammal ...Respondents 1 to 4/ Petitioners 1 to 4
5.Meivel ...Respondent No.5/ 1st Respondent
6.Francis ...Respondent No.6 / 3rd Respondent
7.The Branch Manager,
The National Insurance Company Ltd.,
Divisional Officer -2,
Balaji Tower 2nd Floor,
Ramakrishna Road,
Salem. ...7th respondent / 4th respondent

(6th respondent remained *ex parte* before the lower Court)

Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, praying to set aside the award passed in M.C.O.P.No.118 of 2013, dated 24.08.2015 on the file of the Motor Accidents Claims Tribunal cum Sub Judge, Vedasandur.

For appellant	:	Mr.K.Bhaskaran
For respondents 1 to 4	:	Mr.D.Selvaraj
For respondent 5	:	No appearance
For Respondent 6	:	Remained Exparte before the Lower Court
For 7th respondent	:	Mr.D.Sivaraman

JUDGMENT

(Judgment of the Court was delivered by **R.SUBBIAH, J.**)

This appeal has been filed by the Insurance Company challenging the compensation of Rs.24,80,000/- awarded by the Tribunal in M.C.O.P.No.118 of 2013, dated 24.08.2015, as against claim of Rs.35,00,000/- made by the respondents 1 to 4 herein, who are wife, son, daughter and mother respectively of the deceased Natarajan.

2.Since the present appeal has been filed only questioning the quantum of compensation awarded by the Tribunal, this Court is of the view that it is not necessary to deal with the other aspects of the award.

3.With regard to the quantum of compensation, it is the case of the respondents 1 to 4 / claimants before the Tribunal that the deceased was earning a sum of Rs.20,000/- per month by running a sweet and snacks company in the name and style of Sikkees World. In order to prove the income earned by the deceased on the side of the claimants, the statement of income of the deceased was marked as Ex.P7. The said statement would reveal that the deceased earned a sum of Rs.2,50,000/- in the year 2012-13. That apart, a counterfoil was marked as Ex.P8 to show that during the year 2013-14, the deceased has paid income tax to the tune of Rs.1,600/-. Audited balance sheet of the company relating to the year 2012-13 was also marked as Ex.P6. The Tribunal, by placing reliance on these documents, has come to the conclusion that the deceased would have been earning a sum of Rs.20,000/- per month and Rs.2,40,000/- per annum. After deducting 1/4 amount towards personal expenses, the Tribunal has fixed the annual loss of income as Rs.1,80,000/-. Thereafter, by fixing the age of the deceased as 50, the Tribunal has taken multiplier No.13 and by multiplying the same with the annual loss of income, has fixed the total loss of income as Rs.23,40,000/-. The Tribunal has also awarded compensation under the other heads. The break up details of the amount awarded by the Tribunal are as follows;

Loss of Income	:	Rs.23,40,000/-
Consortium	:	Rs. 50,000/-
Funeral expenses	:	Rs. 20,000/-
Love and Affection (2nd & 3rd claimants)	:	Rs. 50,000/-
Love and Affection (4th claimant)	:	Rs. 20,000/-
Total		Rs.24,80,000/-

4.The main submission of the appellant / Insurance company is that a sum of Rs.20,000/- fixed by the Tribunal as monthly income of the deceased is on the higher side. In order to prove the income of the deceased, the claimants have filed the statement of accounts of the company relating to the period of only one year i.e., 2012-13. Had the deceased earned good income from the company, as contended by the claimants, definitely they would have marked the statement of accounts for the earlier period also. But, the fact that they have filed the statement of accounts relating to only one year i.e., 2012-13 would go to show that the said amount cannot be relied upon. Under such a circumstances, a sum of Rs.20,000/- fixed by the Tribunal, relying on the said documents, is on the higher side. Therefore, by reducing the same, the compensation amount may be modified.

5. Per contra, the learned counsel appearing for the respondents 1 to 4 / claimants submitted his arguments justifying the award passed by the Tribunal.

6. Keeping the submissions made by the learned counsel appearing on either side, we have carefully gone through the entire materials available on record. We find that in the absence of any tangible proof to show that the deceased was earning a sum of Rs.20,000/- p.m. and the deceased was making a good income by running a Sweet and Snacks company, the Tribunal has fixed a sum of Rs.20,000/- as monthly income of the deceased only by placing reliance on the statement of accounts pertaining to the year 2012-13 alone. Therefore, the same must be reduced. However, considering the present day cost of living, we are of the opinion that a sum of Rs.16,000/- p.m. can be fixed as monthly income of the deceased to arrive at a just and appropriate compensation. Thus, the annual loss of income would come to Rs.1,92,000/- (16,000 x 12 = 1,92,000). Since the dependants are four in numbers, this Court is of the view that as rightly applied by the Tribunal, 1/4th amount can be deducted from the annual income for the personal expenses of the deceased. Accordingly, after deduction of 1/4th amount, the annual loss of income comes to Rs.1,44,000/- (1,92,000 - 48,000 = 1,44,000). Considering the age of the deceased, the Tribunal has rightly applied the multiplier No.13. If the multiplier No.13 is applied, then the total loss of income comes to Rs.18,72,000/- (1,44,000 x 13 = 18,72,000). The compensation awarded by the Tribunal under the other heads appears to be reasonable. Hence, the same are confirmed. Thus, the compensation of Rs.24,80,000/- awarded by the Tribunal is reduced to Rs.20,12,000/- as under:

Loss of Income	: Rs.18,72,000/-
Consortium	: Rs. 50,000/-
Funeral expenses	: Rs. 20,000/-
Love and Affection (2nd & 3rd claimants)	: Rs. 50,000/-
Love and Affection (4th claimant)	: Rs. 20,000/-
Total	Rs.20,12,000/-

7. In fine, this appeal is partly allowed without costs. The compensation awarded by the Tribunal is reduced to Rs.20,12,000/-. The appellant / Insurance Company is directed to deposit the entire award amount with 7.5% interest per annum from the date of petition till the date of deposit, less the amount already deposited, if any, before the Tribunal, within a period of six weeks from the date of receipt of a copy of this judgment. The excess amount, if any, had been deposited, the same shall be withdrawn by the appellant/ Insurance company. On such deposit being made, the claimants are permitted to withdraw their respective shares with proportionate interest and costs as apportioned by the Tribunal. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-I)

/TRUE COPY/

Sub Assistant Registrar

To

1.The Subordinate Judge,
The Motor Accidents Claims Tribunal
Vedasanthur.

+1 cc to MR.K.Bhaskaran ADVOCATE, SR NO:82595
+1 cc to MR.D.Selvaraj ADVOCATE, SR NO: 2593

gcg
sva/cm/msa/22.02.2017/4p/4c

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