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)Nos.922 of 2011
and
M.P.(MD).No.1 of 2011

The Branch Manager,
The New India Assurance Company Ltd.,
No.482, 483 S.N.V.Chambers 3rd Floor,
Coimbatore -12. .. Appellant / 2nd respondent

Vs.

1.Ramasamy

2.Lakshmi

3.Thamilselvi .. Respondents 1 to 3/Petitioners

4.Selvaraj .. 4th respondent /1st respondent

(The 4th respondent was 1st respondent before the Tribunal and he remained ex-parte before the Tribunal. Hence, notice to 4th respondent is dispensed with.)

Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, praying to set aside the award and decree dated 05.01.2011 made in M.C.O.P.No.266 of 2009 on the file of the Motor Accidents Claims Tribunal, Kulithalai.

For appellant : Mr.B.Vijay Karthikeyan

For respondents 1 to 3 : Mr.M.Mahaboob Athiff
for M/s.Ajmal Associates

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.15,41,000/- awarded by the Tribunal in M.C.O.P.No.266 of 2009, dated 05.01.2011, as against claim of Rs.25,00,000/- made by the respondents 1 to 3 herein, who are father and sisters respectively of the deceased Sivakumar.

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.It is the case of the respondents 1 to 3 / claimants in respect of quantum of compensation before the Tribunal that the deceased Sivakumar was working as a Manager in a Mobile Store Services Private Limited and drawing a salary of Rs.25,000/- per month. In order to prove the income of the deceased, on the side of the respondents 1 to 3 / claimants, a Manager of the said Mobile Store Company was examined as PW5. He has stated in his evidence that the deceased was earning a sum of Rs.1,08,000/- per annum (Rs.9,000/- per month) and that he was also receiving a sum of Rs.1,500/- as yearly increment. In order to contradict the same, nothing has been produced on the side of the Insurance company.

4.Hence, based on the evidence of PW5, the Tribunal has fixed the salary of the deceased as Rs.1,08,000/- per year and thereafter, by adding 25% of the amount towards future prospects along with the salary of the deceased (Rs.1,08,000/- + Rs.27,000/- = Rs.1,35,000/-) and by deducting 1/3rd of the income of the deceased for his personal expenses, the Tribunal has arrived at the loss of income of the deceased as Rs,90,000/- per annum (Rs.1,35,000/- X 2/3 = Rs.90,000/-). Considering the age of the deceased, the Tribunal has fixed the multiplier No.17 and arrived at the total loss of income of the deceased as Rs.15,30,000/- (Rs.90,000/- x 17 = Rs.15,30,000/-). Thereafter, the Tribunal awarded a sum of Rs.5,000/- towards funeral expenses, Rs.3,000/- towards transport expenses and Rs.5,000/- towards loss of love and affection. Thus, the total compensation awarded by the Tribunal comes to Rs.15,43,000/-. But, in the award of the Tribunal, the total compensation has been mistakenly stated as Rs.15,41,000/-. The break up details of the amount awarded by the Tribunal is as follows;

	Rs.
Loss of income	15,30,000/-
Funeral expenses	5,000/-
Transport expenses	3,000/-
Loss of love and affection	5,000/-
Total	15,43,000/-

5. Now it is the submission of the learned counsel for the appellant / Insurance Company that the claimants are only the father and sisters of the deceased and the compensation awarded by the Tribunal on the head of the loss of income is extremely on the higher side and hence, the compensation awarded by the Tribunal under the said head needs modification.

6.Heard the learned counsel appearing for the respondents 1 to 3 / claimants on the submission made by the learned counsel for the appellant.

7.Keeping the submissions made by the learned counsel appearing for both sides, we have carefully gone through the entire materials available on record. We find that the deceased was a M.C.A. graduate and had experience in the same field. In order to prove the income of the deceased, the claimants have examined PW5 and he has categorically stated that the deceased was earning a sum of Rs.9,000/- per month. Thus, the annual income of the deceased fixed by the Tribunal at Rs.1,08,000/- cannot be stated to be excessive. It is, in fact, reasonable.

8. The Tribunal has added 25 % of the salary of the deceased for future prospects. As the claimants are only the aged father and sisters, this Court is of the view that they would not depend on the income of the deceased throughout their life. Probably, the claimants 2 and 3 would be dependent on the income of the deceased till they got married. Therefore, this Court is not inclined to add 25% of the salary of the deceased for future prospects.

9.Considering the age of the deceased, the Tribunal has rightly fixed the multiplier No.17. If 2/3rd of the salary of the deceased is deducted for personal expenses, the annual salary of the deceased comes to Rs.72,000/- (1,08,000 x 2 / 3 = Rs.72,000/-). Applying the multiplier No.17 with the annual salary of the deceased, the total loss of income comes to Rs.12,24,000/- (72,000 x 17 = 12,24,000).

10. We find that the Tribunal has awarded only a sum of Rs.5,000/- towards loss of love and affection. It appears to be extremely on the lower side. Considering the fact that the first claimant, who is the father of the deceased, lost his only son, this Court is of the view that awarding a sum of Rs.1,00,000/- towards the loss of love and affection of the first claimant would be reasonable. Considering the relationship of the claimants 2 and 3 with the deceased, this Court is of the view that a sum of Rs.50,000/- each would be reasonable towards their loss of love and affection and accordingly, they are enhanced. Similarly, the funeral expenses awarded by the Tribunal is on the lower side and hence, the same is enhanced to Rs.11,000/-. The compensation awarded by the Tribunal under the head of Transport Expenses is also on the lower side and hence, the same is also enhanced to Rs.6,000/-. Consequently, the compensation of Rs.15,43,000/- awarded by the Tribunal is reduced to Rs.14,41,000/-as under:

	Rs.
Loss of income	12,24,000.00
Funeral expenses	11,000.00
Transport expenses	6,000.00
Loss of Love and Affection (C1)	1,00,000.00
Loss of love and affection (C2 and C3 - Rs.50,000 each)	1,00,000.00
	14,41,000.00

(C - Claimant)

11. In fine, this appeal is partly allowed. The compensation awarded by the Tribunal is reduced to Rs.14,41,000/-. The 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 Insurance company. Out of the award of Rs.14,41,000/-, the 1st claimant is entitled to get Rs.10,00,000/-. The balance amount shall be equally shared by the 2nd and 3rd claimants. On such deposit being made, the claimants are permitted to withdraw their entire respective share with proportionate interest and costs. Consequently, connected miscellaneous petition is closed. No costs.

Sd/
Assistant Registrar(C.O.,)

/TRUE COPY/

Sub Assistant Registrar

To

The Motor Accidents Claims Tribunal, Kulithalai.

Copy to: The Section Officer, VR Section,
Madurai Bench of Madras High Court, Madurai.

+1cc to M/s.B.Vijay Karthikeyan, Advocate, in SR No.82599.

C.M.A.(MD) Nos.922 of 2011
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