IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 09.06.2017

C O R A M

The Honourable Mr.Justice S.Manikumar
and
The Honourable Mr.Justice M.Govindaraj

Civil Miscellaneous Appeal No.1317 of 2017
and
C.M.P.No.6846 of 2017

Divisional Manager
The Oriental Insurance Company Limited
Hub 3rd Party Claims
Vijayalakshmi Complex, First Floor
No.32/13, Phase NO.2
Sathuvachari, Vellore ... 2nd Respondent/Appellant

Vs

1.Vasanthi
2.Minor Chithra
3.Minor Sridhar ...Petitioners/R1 to R3
(R2 & E3 declaered as major vider court order dt.09.06.2017 made in CMA.1317/17 by SMKJ & MGRJ)
4.Settu ... 1st Respondent/4the Respondent
(4th Respondent set exparte in the lower court. Hence, notice is dispense with)

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 05.10.2016, passed in M.C.O.P.No.29 of 2015, by the Special Motor Accident Claims Tribunal, Tiruvannamalai.

For Appellant : M/s.G.Sukumari
For Respondents: Mr.F.Terry Chella Raja for R1 to R3

J U D G M E N T
(Made by M.Govindaraj, J.)

Challenge in this appeal is to the judgment and decree dated 05.10.2016, passed in M.C.O.P.No.29 of 2015, by the Special Motor Accident Claims Tribunal, Tiruvannamalai.

2. In the accident, which occurred on 05.10.2014 at 1.45 p.m on Tiruvannamalai to Avalurpettai Road, near Annai Vessels, sole breadwinner of the respondents 1 to 3/claimants, died. Legal representatives, namely, wife and minor children of the deceased, filed M.C.O.P. No.29 of 2015 before the

Special Motor Accident Claims Tribunal, Tiruvannamalai.

3. On evaluation of pleadings and evidence, the Tribunal awarded compensation of Rs.49,15,588/- with interest at the rate of 7.5% per annum, from the date of claim, till realisation and costs, as hereunder:

Loss of income	: Rs.45,27,588/-
Loss of consortium	: Rs. 1,00,000/-
Loss of love and affection	: Rs. 2,00,000/-
Funeral Expenses	: Rs. 25,000/-
Medical Expenses	: Rs. 63,000/-
Total	: Rs.49,15,588/-

4. Since the issue to be decided in the appeal falls within a narrow campus, we do not prefer to elaborate on factual details of the case.

5. Mr.G.Sukumari, learned counsel for the appellant/insurance company, submitted that at the time of accident, the deceased was aged above 50 years, and the Tribunal failed to appreciate that computation for future prospects at 30% cannot be granted, and no extraordinary circumstances, justifying the same, have been made out. We accept the said contention of the learned counsel for the appellant/insurance company, for the reason that, in the decision in Rajesh v. Rajbir Singh reported in (2013) 9 SCC 54, the Hon'ble Apex Court at para 12, held that for the age group of people between 50 to 60 years, 15% of the income can be added to the income, for the purpose of computation of compensation. Paragraph 12 of the said judgment is thus:

> "in case of self-employed persons or persons with fixed wages, the actual income of the deceased must be enhanced for purpose of computation of compensation: (i) by 50% where his age was below 40 yrs, (ii) by 30% where he belonged to age group of 40 to 50 yrs, and (iii) by 15% where he was between age group of 50 to 60 yrs - However, no such addition/enhancement permissible where deceased exceeded the age of 60 yrs - For the above purpose, reiterated, actual income would mean income after paying tax, if any."

The Tribunal has committed an error by applying 30% of income for future prospects. Hence, the same is reduced to 15% for fixing the monthly income.

6. Before the Tribunal, the claimants have filed Ex.P12-Pay certificate of D.Arivudai Nambi, for the month of September, 2014, issued by the Assistant Elementary Educational Officer, Melmalayanur. The pay drawn particulars and the deductions noted in the said certificate, are as follows:

PAY DETAILS		DEDUCTION DETAILS	
Pay	: Rs.15,510/-	TPF (Subscription)	: Rs.5,000/-
Grade Pay	: Rs. 4,500/-	TPF Loan	: Rs.5,800/- (8/36)
DA	: Rs.21,411/-	FBF	: Rs.30/-
HRA	: Rs. 340/-	HI	: Rs.150/-
MA	: Rs. 100/-	HANDLOOM	: Rs.1,260/- (9/10)
		FA	: Rs.500/- (9/10)
TOTAL	: Rs.41,861/-	TOTAL	: Rs.12,740/-

TPF (subscription), Family Benefit Fund and health insurance, are statutory deductions and the same would be deducted from his salary every month. Hand loom and festival advance are deductions towards the loan advanced to him, under the said heads, and that the same would be deducted for one month only. For the purpose of applying split multiplier, the period of service is calculated in terms of months. If multiplier 13 is converted into months, the same would come to 156 months, out of which, 96 months were regular service and 60 months would be, after retirement. In the light of the above, we do not find any error in the application of '13' multiplier. Hence, after applying standard income tax deductions and after reworking, the loss of contribution to the family is calculated as follows:

For 1 month	: Rs. 26,159.00
For 27 months	: Rs. 6,50,562.00
For 68 months	: Rs.16,38,850.00
For 60 months	: Rs. 8,02,354.00
Total	: Rs.31,17,925.00

7. The Tribunal has awarded a sum of Rs.1,00,000/- under the head loss of consortium to wife. In addition to the above, the Tribunal has awarded a sum of Rs.25,000/- under the head funeral expenses and a sum of Rs.63,000/- towards medical expenses. The award cannot be said excessive and the same do not warrant any reduction.

8. Learned counsel for the appellant/insurance company has further contended that the compensation awarded to the minor children under the head "loss of love and affection" is on the higher side. In view of the decision of Apex Court in Rajesh's case, cited supra, the same cannot be said to be excessive. Further, children of the deceased have not only lost the love and affection but also, the guidance from their father. From the material on record, it could be deduced that the the Tribunal has not awarded any amount under the head Loss of Estate. Hence, we are of the considered view that a

sum of Rs.30,000/- can be awarded under the said head, Loss of Estate. In addition, we award a sum of Rs.25,000/- under the head transportation and another sum of Rs.2,000/- under the head damages to clothes and articles. Thus, the Overall quantum of compensation, to which the legal representatives of the deceased are entitled, is as under:

Loss of income	: Rs.31,17,925/-
Loss of consortium	: Rs. 1,00,000/-
Loss of love and affection	: Rs. 2,00,000/-
Funeral Expenses	: Rs. 25,000/-
Medical Expenses	: Rs. 63,000/-
Loss of Estate	: Rs. 30,000/-
Transportation	: Rs. 25,000/-
Damages to clothes	: Rs. 2,000/-
Total	: Rs.35,62,925/-

Compensation awarded by the Tribunal is Rs.49,15,588/-. On appeal, compensation now determined by this court is Rs.35,62,925/-. Hence there will be a reduction of compensation by Rs.13,52,663/- and it shall be applied in the proportion ordered by the Tribunal below.

9. Learned counsel for the respondents 1 to 3 submitted that the minor children, have attained majority. The said submission is placed on record.

10. Learned counsel for the appellant herein/insurance company, submitted that, appellant has deposited the entire award amount with proportionate interest and cost, to the credit of M.C.O.P. No.29 of 2015 on the file of Special Motor Accident Claims Tribunal, Tiruvannamalai.

11. Now, in the light of reduction in the quantum of compensation, appellant/Oriental Insurance Company Ltd, is permitted to withdraw the balance amount lying in the credit of M.C.O.P. No.29 of 2015 on the file of Special Motor Accident Claims Tribunal, Tiruvannamalai.

12. The civil miscellaneous appeal is allowed in part on the above terms. However, there shall be no order as to cost in the appeal.

Sd/-
Assistant Registrar(VIII)

//True Copy//

Sub Assistant Registrar

asr

To

The Special Motor Accident Claims Tribunal
Tiruvannamalai

Copy to:The Section Officer, VR Section,
High Court, Madras

+1cc to M/s.G.Sukumari, Advocate SR.No.41084
+1cc to M/s.F.Terry, Advocate SR.No.41159

SSV(CO)
EU:26.4.2018

C.M.A.No.1317 of 2017
and
C.M.P. No.6846 of 2017