IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2017

CORAM:

THE HONOURABLE Dr. JUSTICE S.VIMALA

C.M.A.No.1538 of 2016

1. Tmt.Mumtaz

2. Selvi Taj Gouser
   (Declared as major as per order in
   M.P.No.319 of 2013 dated 20.08.2013)

3. Minor Suyal Ahamed
   (R3 is represented by his mother
   first petitioner)

4. Tmt. Rahamath Bee
   (R4 - deleted as per order passed
   in M.P.No.321 of 2013 dated 20.08.2013)

... Appellants / Claimants

versus

1. Kaveramma

2. ICICI Lombard General Insurance Co. Ltd.
   No.140, Chottabhai Center,
   Nungambakkam High Road,
   Nungambakkam,
   Chennai - 600 034. … Respondents/Respondents

(R1 remained ex parte before the Tribunal)

Prayer : This Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the decree and judgment dated 06.01.2014 made in M.C.O.P.No.1142 of 2010 on the file of the Motor Accident Claims Tribunal (Special Sub Judge-I) Chennai.

For Appellant : Mr.K.Varadha Kamaraj

For R-2 : Mrs.R.Sreevidhya

JUDGMENT

In respect of death of one Ghouse Mohadeen in the accident that took place on 26.10.2009, the wife, daughter, son and mother of the deceased have filed a claim petition in M.C.O.P.No.1142 of 2010 before the Motor Accident Claims Tribunal (Special Sub Judge-I) Chennai, claiming compensation of Rs.12,00,000/-. The Tribunal, after considering oral and documentary evidence, has awarded a sum of Rs.9,50,500/- as compensation and the break-up details of the compensation read as under:

Pecuniary loss	-	Rs.8,40,060/-
Loss of consortium	-	Rs. 50,000/-
Loss of love and affection	-	Rs. 50,000/-
Funeral expenses	-	Rs. 10,440/-
Total	-	Rs.9,50,500/-

Challenging the quantum of the compensation as inadequate, the claimants have filed the present appeal, seeking enhancement of compensation.

2. Learned counsel appearing for the appellants would submit that the deceased was the member of the Private Medical Practitioners' Association of India and his service as Siddha Doctor has been recognized and he has received so much of awards and therefore, his monthly income should be taken on a higher side.

3. Learned counsel appearing for the second respondent/Insurance Company would submit that there is no proof with regard to the income of the deceased, who was practicing as Siddha Doctor and in the absence of record being filed, the minimum income could be taken as prescribed in the Act. Therefore, the award passed by the Tribunal is justifiable.

4. No doubt, deceased's certificates, including the Membership certificate and experience certificate have been filed, which are marked as Exs.B12 to B20. For the reasons best known, the proof relating to the income has not been filed.

However, the fact remains that in the case of a student, the monthly income has been taken at Rs.10,000/- by the Apex Court, in the case of V.Mekala vs. M.Malathi and another, reported in 2014 (2) TN MAC 6 (SC), which is relied upon by the learned counsel for the appellant. Therefore, in this case, monthly income of the deceased can be taken at Rs.8,000/- and after deducting 1/4th towards personal expenses, the monthly contribution of the deceased to the family would be at Rs.6,000/- and by adding 40% towards future prospective increase in income, i.e. Rs.2,400/-, the monthly income would be at Rs.8,400/-. It is also pointed out that the appropriate multiplier is '14' and not '15', as per the decision in the case of Sarla Verma v. Delhi Transport Corporation reported in, (2009) 6 SCC 121. Therefore, the loss of dependency to be awarded is Rs.14,11,200/- (Rs.8400 x 12 x 14). Furthermore, the compensation towards funeral expenses is enhanced from Rs.10,440/- to Rs.15,000/-. Rs.25,000/- is awarded towards loss of consortium to the first respondent and Rs.25,000/- is awarded towards loss of love and affection to the second and third petitioners. The break-up details of the enhanced compensation read as under:

Pecuniary loss	-	Rs.14,11,200/-
Loss of consortium	-	Rs. 25,000/-
Loss of love and affection	-	Rs. 25,000/-
Funeral expenses	-	Rs. 15,000/-
Total	-	Rs.14,76,200/-
Rounded off	-	Rs.14,76,000/-

5. In the result, the Civil Miscellaneous Appeal is allowed, enhancing the compensation from Rs.9,50,500/- to Rs.14,76,000/-, which is payable with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit (excluding the default period).

6. The second respondent-Insurance Company shall deposit the entire compensation, less the amount already deposited if any, along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit (excluding the default period, if any) with costs, within a period of four weeks from the date of receipt of a copy of this order. The first and second appellants are permitted to withdraw their share amounts as per the ratio of apportionment as ordered by the Tribunal. The

minor's share shall be deposited in a fixed deposit in any one of Nationalized Banks for a period of three years, till he attains majority and the mother of the minor is permitted to withdraw the interest accrued thereon once in three months directly from the Bank. The appellants shall pay the court fee due, if any. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal
(Special Sub Judge-I) Chennai.

+1cc to Mr.K. Varadhakamaraj, Advocate, S.R.No.4163
+1cc to Mr.R.Sreevidhya, Advocate, S.R.No.4773

C.M.A.No.1538 of 2016

VGII(CO)
CS/23/05/17