IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.04.2017

CORAM

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

C.M.A.No.1448 of 2017

1. Thabitha, W/o. Thimothy
2. M.T.Buclah Esther Rani (minor)
3. M.T.Freedy Paul (minor)
4. M.T.Therasa Freeda (minor)
5. M.T.Hebsibadancy (minor)

(Minor appellants are rep. by their mother Thabitha)
... Appellants/Petitioners

Vs

1.N.Sundraraj

2.The United India Insurance Company Limited,
3rd party claim office, No.53,
North Raja Street,
Thiruvallur - 602 001. ... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal as against the order and decree made in M.C.O.P.3845/2009 dated 11th day of November 2012 on the file of the Motor Accident Claims Tribunal, Chief Judge Small Causes Court, Chennai for the enhancement of compensation.

For Appellants : Mrs.Ramya Rao
For M/s.R.S.Jain-Le-Sadamar

For Respondents : Mr.D.Baskar for R-2

JUDGMENT

This Civil Miscellaneous Appeal has been preferred as against the award of the Rs.5,05,500/- as compensation for the death of one Thimothy, aged about 54 years, working as Sales Manager in a Private Company, allegedly earning Rs.18,000/- per month, in the accident, which occurred on 31.03.2009, when the said Thimothy, who was standing in the GNT Road, Puzhal Junction, to cross the road, was hit down by an Ambassador car, bearing Registration No. TN-04-C-9478, insured with the second respondent, driven in a rash and negligent manner.

2. Heard Mrs.Ramya Rao, learned counsel appearing for the appellants and Mr.D.Baskar, learned counsel appearing for the second respondent.

3. Since the 1st respondent/owner of the vehicle remained ex parte before the Lower Court, notice is dispensed with as per the Full Bench Judgment of the Madhya Pradesh High Court rendered in Mrs. Jamuna Bai V. Chhote Singh reported in I (2004) Acc. 190 (FB).

4. The question to be decided is with regard to the quantum of compensation, as no appeal has been preferred by the Insurance Company questioning the negligence aspect.

5. The learned counsel for the appellants would submit that inspite of the evidence of P.W.3, the employer, that the deceased was earning Rs.18,000/- per month, erroneously, only a sum of Rs.4,500/- was determined as monthly income and further, she would submit that amounts granted under other heads are also very low.

6. On the other hand, Mr.D.Baskar, learned counsel appearing for the second respondent would oppose enhancement of the compensation and seek confirmation of the award.

7. From the records, it is very clear that the accident occurred on 31.03.2009. Though there is no positive evidence regarding the monthly income of the deceased, in the light of the judgment of the Honourable Apex Court in Syed Sadiq V. Divisional Manager, United India Insurance Co. Ltd reported in 2014 (1) TN MAC 459 (SC) , wherein, in respect of a vegetable vendor, who sustained injuries in the accident, which occurred during the year 2008, in the absence of any proof regarding income, the monthly income was fixed at Rs.6,500/-. As in the case at hand, the accident had occurred on 31.03.2009, this Court is inclined to follow the said determination made by the Hon'ble Supreme Court in the aforecited judgment and accordingly, the monthly income fixed by the Tribunal at Rs.4,500/- is modified as Rs.6,500/-.

8. No amount was awarded towards "Future Prospects". However, as per the judgment of the Honourable Apex Court rendered in Sarla Verma V. Delhi Transport Corporation (2009 (2) TNMAC (1) SC), as the deceased was aged about 54 years, 15% is required to be added towards his "Future Prospects" and the "Total Monthly Income" would work out to,

Total Monthly Income :: Rs. 6500/- (+) 15% (Rs.6,500/-)
:: Rs.7,475/-

Since the number of dependants of the family of the deceased is five, one-fourth was rightly deducted by the Tribunal towards the "Personal Expenses" of the deceased and applying the same, "Monthly Contribution of the deceased to his family" = Rs.7,475/- (-) ¼(Rs.7,475/-)
= Rs.5606/-

9. As per the Death Certificate, Ex.P4, the age of the deceased is 54 years and the appropriate multiplier is 11 and the same was rightly adopted by the Tribunal. Therefore, applying the said multiplier, "Loss of Dependency" is calculated thus:

Loss of Dependency = Rs.5606 x 12 x11
= Rs.7,40,025/-.

10. The Tribunal, very erroneously awarded only a sum of Rs.10,000/- for "Loss of Consortium" and the same is enhanced to Rs.1,00,000/- as per the judgment of the Honourable Supreme Court rendered in Rajesh and others /vs/ Rajbir Singh reported in 2013 (2) TNMAC 55 (SC). For "Loss of love and affection", a sum of Rs.10,000/- alone was awarded, which is a paltry sum, considering the fact that all the four children are minors (three daughters and one son). Therefore, a sum of Rs.4,00,000/- is awarded towards "Loss of Love and Affection" @ Rs.1,00,000/- to each of the minors. The amount awarded towards "Funeral Expenses" is enhanced to Rs.25,000/-. No amount was awarded towards "Loss of Estate" and a sum of Rs.10,000/- is awarded under the said caption. Hence, the award of the Tribunal to the tune of Rs.5,05,500/- is enhanced to Rs.12,75,025/-, rounded off to Rs.12,75,000/-. The rate of interest awarded by the Tribunal @ 7.5% per annum remains the same.

11. Though the value of the claim in the appeal is to the tune of Rs.4,94,500/-, by re-appreciating the evidence on record and applying the correct position of law, as on date and in the light of the Hon'ble Supreme Court in Nagappa V. Gurudayal Singh reported in 2004 (2) TN MAC 398 (SC), in an endeavour to do complete justice, this Court has awarded just and reasonable compensation.

12. The appellants shall pay additional court-fee for the enhanced award amount, within a period of two weeks from the date of receipt of a copy of this order. Out of the total compensation payable to the appellants/claimants, the 1st appellant would be entitled to a sum of Rs.6,75,000/- and appellants 2 to 5 would be entitled to Rs.1,50,000/- each.

13. The second respondent/Insurance Company is directed to deposit the entire amount, as per the modified award passed by this Court, along with interest and costs, after deducting the amount already deposited, if any, before the Tribunal, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the share of the 1st appellant, as per the apportionment made by this Court, directly to her Bank Account, through RTGS, after getting the required details, in regard thereto, within a period of two weeks thereafter. The share of the minors/appellants 2 to 5, to the tune of Rs.1,50,000/- each, shall be deposited in interest bearing Fixed Deposit, in any one of the Nationalised Banks, till they attain majority. The 1st appellant is permitted to withdraw interest accruing on such deposit, once in three months.

14. In the result, the Civil Miscellaneous Appeal is allowed and award of the Tribunal to the tune of Rs.5,05,500/- is enhanced to Rs.12,75,000/- together with interest @ 7.5% per annum.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

kas/nv

To

1.The Motor Accident Claims Tribunal,
(Chief Judge,Small Causes Court)
Chennai.

2.The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to M/s.R.S.Jain-Le-Sadamar, Advocate, S.R.No.26331
+1cc to Mr.D.Bhaskaran, Advocate, S.R.No.26322

C.M.A.No.1448 of 2017

CNR(CO)
CA(03/08/2017)