IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.04.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.1760 of 2016

1. Saranya
2. Minor S.P.Kiran
3. Minor S.P.Krish
4. Yesodha
5. C.Sekar
6. S.Rajeshkumar ..Appellants/Claimants

[Minors/appellants 2 and 3 rep. by mother/1st appellant Saranya]

vs.

1. M/s.A.K.R.Textiles,
Rep. by its Proprietor.

2. SBI General Insurance Co. Ltd.,
Branch Office,
2nd Floor, Ward No.A1-N, Block No.15,
Door No.104, Excellence Building,
Race Course Road, Coimbatore. ..Respondents/Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Order and Decreetal Order in MCOP No.823 of 2013 dated 07.04.2016 on the file of Motor Accidents Claims Tribunal, [Special District Court], Salem.

For Appellants : Mr.R.Neelakandan
For Respondents: Mr.N.Vijayaraghavan (for R2)

J U D G M E N T

[Order of the Court was made by S.MANIKUMAR, J.]

Not satisfied with the quantum of compensation of Rs.20,10,130/-, with interest at the rate of 7.5% per annum from the date of claim till deposit and costs, awarded in MCOP No.823 of 2013 dated 07.04.2016 on the file of Motor Accidents Claims Tribunal, [Special District Court], Salem, legal representatives have filed the instant appeal.

2. According to the claimants, at the time of accident, the deceased was a Senior Merchandiser in Fashion Industry. They further submitted that when documents, Ex.P5-Diploma in Textile Technology Certificate, Ex.P9, Certificate of Registration (Form-B), Ex.P10, Acknowledgement from District Industries Centre, Tirupur, Ex.P11, Importer-Exporter Code Certificate, Ex.P12, Salary certificate (March 2012), Ex.P13, Visiting card - Allwin Apparel, Ex.P14, Alwin Apparel's Ledger Account of Swaraj Fashions, Ex.P15, Ledger Account of Centering Apparel Pvt. Ltd., Ex.P16, Assisi Garments Ledger A/c for Allwin Apparel, Ex.P17, Ledger a/c of R.A.Exports Allwin Apparel, Ex.P18, Saranya Garments - Allwin Apparel Ledger a/c. (April-13 to June-13), Ex.P19, Statement of a/c for the period between 01.01.2012 and 15.07.2013, Ex.P20, Form-I, Value Added Tax monthly return, Ex.P24, VAT return issued by the Assistant Commissioner (CT), Tirupur Rural Circle and Ex.P25, Canara Bank statement deposit details for the period 2012-13, have been marked to prove avocation and business turnover of the firm was Rs.3,06,621/- and when bank statement Ex.P19 was produced, substantiating transaction of Rs.22,83,961/-, the claims tribunal, has grossly erred in arriving at the conclusion that the profit margin would be only 12% and accordingly, determined the monthly income of the deceased as Rs.14,000/- for the purpose of computing the loss of contribution to the family.

3. Added further, Mr.R.Neelakandan, learned counsel for the appellants submitted that the tribunal erred in not adding 50% of the income, under the head future prospects, for computing loss of contribution to the family. Attention of this Court was also drawn to the lesser compensation awarded under the heads loss of consortium, loss of love and affection to the children and parents.

4. After perusing the impugned judgment, Mr.N.Vijayaraghavan, learned counsel appearing for SBI General Insurance Company Limited, 2nd respondent herein, fairly submitted that the tribunal ought to have added up 50% of the income under the head future prospects. Considering the age of the widow, children and other legal representatives, learned counsel for the Insurance company also submitted that compensation awarded under the head consortium and loss of love and affection, requires reasonable enhancement. We place on record the above submissions.

Heard the learned counsel for the parties and perused the materials available on record.

5. On the facts and circumstances of the case, evidence on record, we accept the contention that addition of future prospects ought to have been made for the purpose of computing loss of contribution to the family. Deceased was aged 31 years. Hence, 50% is added under the head future prospects. Income works out to Rs.21,000/- per month. Annual income is

Rs.2,52,000/-. Accident has occurred on 16.05.2013. For the relevant year, as per the provisions of income tax, income upto Rs.2,00,000/- is not taxable. For the balance amount of Rs.52,000/- tax has to be deducted at 10%. Hence, income tax payable is Rs.5,200/-. After deducting the same, net annual income works out to Rs.2,46,800/-. Dependants are six in number. As per the decision of the Hon'ble Supreme Court in Sarla Verma and others Vs. Delhi Transport Corporation and another, reported in 2009 (2) TNMAC 1 (SC), 1/5th has to be deducted towards personal and living expenses of the deceased. Deceased was aged 31 years and the multiplier applicable is '16'. Loss of contribution to the family works out to Rs.31,59,040/-.

6. At the time of accident, 1st appellant-wife, was stated to be 25 years. Rs.50,000/- awarded under the head loss of consortium is less. Following the decision of the Hon'ble Supreme Court in Rajesh and others Vs. Rajbir Singh, reported in 2013 ACJ 1403, we deem it fit to award Rs.1 Lakh under the head loss of consortium. At the time of accident, two minor children were less than four years. Compensation of Rs.50,000/- awarded to them, under the head loss of love and affection, is less. Hence, following the decision in Rajesh's case [cited supra], we deem it fit to award compensation of Rs.1,00,000/- each, under the head loss of love and affection. Other dependants were parents aged about 51 years and 49 years and brother aged about 26 years. We deem it fit to award Rs.50,000/- each, under the head loss of love and affection. Sum of Rs.13,000/- awarded under the head transportation is sustained. Tribunal has not awarded any amount towards loss of estate and conventional damages. Hence, sum of Rs.10,000/- and Rs.2,000/- is awarded under the heads loss of estate and conventional damages, respectively.

7. In the light of the reworking, as stated supra, total compensation due and payable to the legal representatives of the deceased/appellants works out to Rs.36,59,040/- and the same is apportioned as hereunder.

Loss of contribution to family	: Rs.31,59,040/-
Loss of consortium	: Rs. 1,00,000/-
Loss of love and affection	
to minor children (Rs.1,00,000/- X 2)	: Rs. 2,00,000/-
to parents and brother (Rs.50,000/-X3)	: Rs. 1,50,000/-
Transportation	: Rs. 13,000/-
Funeral expenses	: Rs. 25,000/-
Loss of estate	: Rs. 10,000/-
Conventional Damages	: Rs. 2,000/-

Tribunal has awarded Rs.20,10,130/-. On appeal, this Court has enhanced the same to Rs.16,48,910/-.

8. Mr.N.Vijayaraghavan, learned counsel for the insurance company submitted that on 01.06.2016, satisfying the award, Rs.24,99,857/- has already been deposited to the credit of MCOP

No.823 of 2013 on the file of Motor Accidents Claims Tribunal, [Special District Court], Salem. Compensation awarded by the tribunal is Rs.20,10,130/- with interest, at the rate of 7.5% per annum from the date of claim till deposit and costs.

9. On appeal, compensation now determined by us is Rs.36,59,040/-. Therefore, SBI General Insurance Company Limited, 2nd respondent herein, is directed to deposit the enhanced compensation of Rs.16,48,910/- with interest at the rate of 7.5% per annum from the date of claim till deposit, within a period of six weeks from the date of receipt of a copy of this order. Enhanced amount is apportioned to minors, in equal proportion.

10. On such deposit, except the minor appellants, others viz., appellants 1, and 4 to 6, are permitted to withdraw their shares, as apportioned by the tribunal, with proportionate accrued interest and costs, by making necessary applications. Share of the minors/appellants 2 and 3 shall be deposited in any one of the Nationalised Banks in fixed deposit under the reinvestment scheme initially for a period of three years. Interest accruing on the share of the minors / appellants 2 and 3, shall be paid to the mother of the minors, 1st appellant herein viz., Mrs.Saranya, once in three months, till they attain majority.

11. The Civil Miscellaneous Appeal is allowed, as indicated above. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

ars/skm

To

The Motor Accident Claims Tribunal,
[Special District Court], Salem,

+ 1 cc to Mr.R. Neelakandan, Advocate Sr.18510
+ 1 cc to Mr.N. Vijayaraghavan, Advocate Sr.20875

C.M.A.No.1760 of 2016

RSI(CO)
Eu 02.05.2017