IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.08.2017

CORAM:

THE HON'BLE Dr. JUSTICE S.VIMALA

Civil Miscellaneous Appeal No.1540 of 2017

1. Mrs. Umarobai alias Umaro
2. Mrs. Balubai
3. Minor.Rajkumari
4. Minor.Sarojkumari
5. Minor.Sunitha
6. Minor.Mahendar
7. Minor.Vinoth
   (Appellants 3 to 7 Minors, represented by their mother, Mrs. Umarobai alias Umaro) .. Appellants/Petitioners

..vs..

1. K.A.Rajkumar
2. The United India Insurance Co. Ltd.,
   Third Party Motor Accident Claims Cell,
   South India Co-op. Buildings,
   3rd Floor, Post Box No.4833,
   No.38 Mount Road, Chennai - 600 002..Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree, dated 13.01.2004 made in M.C.O.P.No.12 of 2003 on the file of the Motor Accident Claims Tribunal, Sub Court, Ponneri.

For Appellants : Mr. E.Prabu

For Respondents : Mr. D.Bhaskaran, for R-2
R-1 exparte before the Tribunal

J U D G M E N T

The claimants have filed the appeal, challenging the quantum of compensation awarded at Rs.3,54,600/- as inadequate.

2. The Legal Representatives of the deceased (Vishnusingh @ Visansingh), namely, wife, mother and five minor children (totally seven in numbers) have filed the claim petition claiming a sum of Rs.10,00,000/- as compensation, in respect of

the death of the husband of the first claimant, son of the second claimant and father of claimants 3 to 7.

3. The deceased Vishnusingh @ Visansingh, aged 42, at the time of accident, was doing business as a Pawn Broker and Marbel Stone Seller, earning a sum of Rs.9,000/- per month, died in an accident on 10.11.2002. The Tribunal has quantified the compensation at Rs.3,54,600/- with the following breakup details:-

Loss of income	-	Rs.3,09,600/-
Funeral expenses	-	Rs. 10,000/-
Loss of love and affection	-	Rs. 10,000/-
Loss of consortium to P-1	-	Rs. 25,000/-
		Rs.3,54,600/-

4. While quantifying the pecuniary benefits, daily income has been taken at Rs.70/- per day and the monthly income has been taken at Rs.2,100/-.

5. The learned counsel appearing for the appellants / claimants would submit that the Income Tax Receipt, Ex.A-9, has been filed to show that the deceased was an Income Tax Payer and the monthly income taken is grossly inadequate and it should have been taken at Rs.9,000/- per month.

6. The learned counsel appearing for the second respondent / Insurance Company would submit that Ex.A-9 relates to the period seven years prior to the death and therefore, in the absence of actual income tax assessment, at the time of death, and the payment of current income tax being proved, filing of Ex.A-9 alone will not show the deceased was in a higher financial pedestal and therefore, the monthly income taken by the Tribunal is perfectly justified and it cannot be raised any further.

7. The fact remains that the deceased had been maintaining a big family, consisting of seven members. The dependency includes the minor children, who are to be groomed and elderly person, whose medical care has to be attended to, by the deceased. All the minor children might have been studying and the educational expenses also should have been met only by the deceased. Therefore, it is unrealistic to hold that the deceased had been earning only a sum of Rs.2,100/- per month. With the earnings of Rs.2,100/- per month, it is impossible to maintain the family consisting of seven persons. Even otherwise, when the deceased had been in a position of paying income tax about seven years prior to the accident, then the logical inference is that the deceased would have been in a

better financial position as he gained experience in the business. Therefore, the income should have been taken only at a higher rate.

8. Further, so far as the deduction on account of the personal earnings is concerned, deduction at 1/5th alone would be justified, because when there are large number of dependents, nobody would be inclined to spent money on himself towards his/her personal and living expenses and therefore, deduction of 1/5th alone is justified.

9. Thus, taking the income at Rs.4,000/- per month and adopting 30% future prospective increase in income and applying the multiplier of '14' and deducting 1/5th towards the personal and living expenses of the deceased, the loss of income has to be quantified, which comes to Rs.6,98,880/- (Rs.4,000/- x 12 x 14 + 30% (-) Rs.1/5th).

10. So far as the loss of love and affection is concerned, for all the seven members, the Tribunal has awarded only a sum of Rs.10,000/- and the loss of consortium to P-1 / first appellant / wife has been awarded only at Rs.25,000/-.

11. The learned counsel appearing for the appellants / claimants would point out that when the children are young, where the guidance, support and affection of the father will have a telling effect upon their future, the award of Rs.10,000/- towards love and affection, for all the five minor children, is too low and therefore,it has to be enhanced at Rs.50,000/- to each of them.

12. This contention is justified, considering that the children were minors at the time of accident. Therefore, the loss of love and affection to minor children / claimants 3 to 7 / appellants 3 to 7, are awarded totally at Rs.2,50,000/-. The loss of consortium to the first claimant / wife awarded at Rs.50,000/-. The loss of love and affection to the second claimant / second appellant / mother is awarded at Rs.35,000/-. Funeral expenses is enhanced to Rs.10,000/-. Transport expenses is enhanced to Rs.5,000/-. Thus, the total amount of compensation is quantified at Rs.10,48,880/-, which is payable at 7.5% interest from the date of petition till the date of deposit. The restructured breakup details of the award of compensation reads thus:-

Loss of income	-	Rs.6,98,880.00
Loss of consortium to P-1	-	Rs. 50,000.00
Loss of love and affection to P-3 to P-7	-	Rs.2,50,000.00
Loss of love and affection to P-2 (Mother)	-	Rs. 35,000.00

Funeral expenses	-	Rs. 10,000.00
Transport expenses	-	Rs. 5,000.00
		Rs.10,48,880.00

13. At this juncture, so far as the award of interest is concerned, the learned counsel appearing for the Insurance Company / second respondent vehemently contended that the Insurance Company cannot be burdened with the liability to pay interest, for quite a long period, i.e., from 06.01.2003 till 2017, especially, when the application has been filed with a delay of 185 days.

13.1. True, that the interest of the Insurance Company will get affected to certain extent, when the matters are taken up after a decade or two decades. But, the delay that occurred is a systemic delay and the claimants cannot be taken to task. Therefore, this Court does not think it proper to reduce the interest to a larger extent. Further, the interest, which is being awarded at 9% per annum, is now ordered to be payable only at 7.5% per annum from the date of petition till the date of deposit.

14. Hence, the Appeal is allowed and the Insurance Company / second respondent herein is directed to deposit the entire amount of compensation, as ordered by this Court, along with interest at 7.5% per annum, from the date of petition till the date of deposit, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment and on such deposit being made, the Tribunal shall transfer the compensation amount to the Savings Bank Accounts of the claimants / appellants, through RTGS, in the same proportion, as per the ratio of apportionment made by the Claims Tribunal, since it is represented that all minors have become majors. The claimants are not entitled to any interest for the default period. Needless to state that the claimants shall pay the necessary court fee before receiving the copy of this judgment.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

srk

To

1. Motor Accident Claims Tribunal, Sub Court, Ponneri.

2. The Section Officer, V.R.Section, Madras High Court,
   Chennai 104

+1cc to Mr.D.Bhaskaran, Advocate SR.No.56996

+1cc to Mr.E.Prabhu, Advocate SR.No.57270

C.M.A.No.1540 of 2017

RK(CO)

GMY(22/11/2018)