IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 12.04.2017

CORAM:

THE HON'BLE MR. JUSTICE S. MANIKUMAR
AND
THE HON'BLE MR. JUSTICE M.GOVINDARAJ

C.M.A. No.1734 of 2015,
M.P.No.1 of 2015, C.M.P. Nos.13838 of 2016 and 4874 of 2017

The New India Assurance Company Ltd.
No.30, 1st Floor,
Jawaharlal Nehru Street
Pondicherry - 605 001 ..Appellant/2nd Respondent

Vs.

1.Thangam
2.Deivasigamani ..Respondents 1&2/Petitioner 1&2
3.Dr.M.Kiruthika
@ Gunasundari ..Respondent-3/1st Respondent
4.Mohana Punnagai
5.Akshaya Mithran (Minor)
Rep. by his mother
Mohana Punnagai
..Respondents 4&5/Respondent 3&4

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 05.09.2014, passed in M.C.O.P. No.5140 of 2012, by the Motor Accident Claims Tribunal (II Court of Small Causes), Chennai.

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For Appellant : Mr.R.Sivakumar

For Respondents: Mr.F.Terry Chellaraja
for R1 and R2
Mr.K.Subburam for R4
R3 exparte

JUDGMENT
(Made by M.GOVINDARAJ, J.)

Challenging the award of compensation granted by the Motor Accident Claims Tribunal (II Small Causes Court), Chennai in M.C.O.P. No.5140 of 2012 dated 05.09.2014, the Insurance company has filed the above appeal on the ground that the quantum of compensation awarded by the Tribunal is excessive.

2. On 25.11.2011, Vinoth @ Vinoth Kumar was travelling as a passenger in a Maruti Suzuki Alto car bearing Registration No.PY-01 AE-7389 from Vellore to Pondicherry along Vandavasi Dindivanam Road, at Thenvanakkampadi Village. The driver of the Alto car, on seeing another car which came from the opposite direction, due to fear suddenly drove the car to the left side of the road, in a rash and negligent manner, dashed against a palmyra tree, due to which Vinoth @ Vinoth Kumar sustained grievous injury in the head and died. Parents of the deceased have preferred a claim petition. Wife and minor son were impleaded as respondents. They preferred a claim for Rs.60,00,000/-. However, they restricted their claim to Rs.50,00,000/-. The claimants examined PW1 - mother and PW2 - eye witness and marked Exs.P1 to P7. No witness was examined and no document was marked on the side of the respondent/insurance company.

3. Considering the sequence of averments and based on Ex.P1 and evidence of PW2-eyewitness, the Tribunal has found that the driver of the Alto car was rash and negligent and caused the accident. Car was covered by valid insurance with the appellant insurance company and therefore, the Tribunal held that the insurance company is liable to pay compensation.

4. Insofar as the quantum is concerned, legal representatives claimed that, at the time of accident, the deceased was aged about 31 years, worked as a Field Sales Officer, in a reputed pharmaceutical company and earned Rs.30,000/- per month. The deceased was a B.Pharm graduate and Ex.P6-Salary slips revealed that on an average, the gross annual income was Rs.3,33,586/-. The average monthly income was Rs.27,800/-. Ex.P7 is the copy of the PAN card of the deceased. The deceased was an income tax assessee and income tax has been deducted every month from his salary and the salary slips revealed income, after deducting income tax every month. Therefore, based on the above documents, the Tribunal fixed Rs.25,000/- as the monthly salary of the deceased. At the time of accident, the deceased was aged about 31 years and therefore, following the judgment of Rajesh and others vs. Rajbir Singh and others reported in (2013) 2 TN MAC 55(SC), 50% was added towards future prospects. Thus, the monthly income along with future prospects, was fixed at Rs.37,500/- and after deducting 1/4th amount towards personal and living expenses of the deceased, the loss of contribution to the family was arrived at Rs.54,00,000/-.

4. The Tribunal has awarded, a total compensation of Rs.58,25,000/- under various heads as detailed below:

Loss of contribution to family	: Rs.54,00,000/-
Loss of consortium	: Rs. 1,00,000/-
Loss of love and affection	: Rs. 3,00,000/-
Funeral Expenses	: Rs. 25,000/-
Total	: Rs.58,25,000/-

5. Today, when the matter is taken up for hearing, the learned counsel appearing for the 4th respondent/wife has filed C.M.P. No.4874 of 2017, for receiving additional documents viz. Statement of Accounts of the deceased from ICICI Bank, Pondicherry and Form 26 Account Statement, TDS certificate. Since the quantum of compensation is the main issue in the present appeal and the documents throw much light on the issue of income, it is but fair to receive the above mentioned documents. Accordingly, the civil miscellaneous petition is allowed and the documents are taken on record.

6. Quantum of compensation has been challenged by the appellant/insurance company on the ground that salary includes field travel expenses to the tune of Rs.10,252/- and that the same has to be deducted from the monthly salary. Such an argument cannot be accepted, for the reason that such expenses are reimbursed by the employer. One cannot expect an employee to spend his hard earned wages for company affairs, and it is also an expense to be met by the company. The reimbursement shall not be deducted from salary. As stated supra, we have taken the gross salary, which is summarised under Form 16 for the purpose of income tax deduction and that average monthly salary comes to Rs.28,000/-. Therefore, monthly salary of Rs.25,000/-, fixed by the Tribunal is borne out by records (Ex.P6 - Salary slips). Therefore, the quantum of compensation arrived at by the Tribunal, applying 50% of the salary towards future prospects following the judgment of Rajesh and others vs. Rajbir Singh and others reported in (2013) 2 TN MAC 55 (SC), cannot be found fault with. There are four dependents, in the family and therefore, 1/4th of the amount has been deducted towards personal and living expenses. Applying multiplier 16, corresponding to the age of the deceased which was 31 years, at the time of accident, pecuniary loss has been calculated. Therefore, Rs.54,00,000/- awarded by the Tribunal towards compensation is just and reasonable.

7. The Tribunal has awarded Rs.25,000/- towards funeral expenses, Rs.2,00,000/- towards love and affection to the minor child and Rs.50,000/- each to the father and other of the deceased. The Tribunal has awarded a sum of Rs.1,00,000/- towards loss of consortium to wife/ 4th respondent herein. Therefore, the award of Rs.3,00,000/- towards loss of love and affection and Rs.1,00,000/- towards loss of consortium fixed by the Tribunal cannot be declared as high. Thus the total compensation of Rs.58,25,000/- awarded by the Tribunal, cannot be said to be excessive warranting interference by this court.

8. The Tribunal has apportioned the award of compensation as under:

Wife	: Rs.33,25,000/-
Minor son	: Rs.20,00,000/-
Parents	: Rs. 5,00,000/-

9. At the time of hearing, learned counsel for the respondents 1 and 2 drew our attention that the parents of the deceased have laid the claim petition and conducted the case throughout and they have lost their beloved son at the prime age. Therefore, the plight of the parents should also be considered and a just and reasonable compensation shall be awarded to them also. Considering the relationship, the apportionment is modified as here under:

Wife	: Rs.20,00,000/-
Minor son	: Rs.25,00,000/-
Parents	: Rs.13,25,000/-

10. Learned counsel for the appellant has submitted that the appellant/insurance company, has deposited the entire amount of compensation awarded by the Tribunal, with proportionate interest and cost. Out of which, the claimants have already withdrawn 50% of the award amount. The money apportioned in favour of the minor share, shall be deposited in a Nationalised bank proximate to the residence of the mother/natural guardian under a re-investment scheme. Mother and guardian is entitled to withdraw accrued interest once in three months for the welfare of the minor.

11. Other claimants are entitled to withdraw the money on production of proper identification before the Tribunal. Disbursement of balance money, shall be made after taking note of the apportionment now arrived at.

12. With the above observation, the Civil Miscellaneous Appeal is dismissed. However, there shall be no order as to cost in this appeal. C.M.P. No.4874 of 2017 is allowed and other connected Civil Miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

asr

To

1. The Motor Accident Claims Tribunal
   (II Court of Small Causes), Chennai.

2. The Section Officer, VR Section,
   High Court, Madras.

+ 1 cc to M/s. M. Malar, Advocate SR.22388
+ 1 cc to M/s. R. Sivakumar, Advocate Sr.22257
+ 1 cc to M/s. K. Subbaram, Advocate SR.22511

C.M.A.No.1734 of 2015,
M.P. No.1 of 2105, C.M.P. No.13838 of 2016
and C.M.P. No.4874 of 2017

RSK(CO)

Eu 28.07.17