IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.09.2017

DELIVERED ON : 27.10.2017

CORAM

The HON'BLE MR. JUSTICE R.SUBBIAH

and

The HON'BLE MR. JUSTICE P.VELMURUGAN

C.M.A.No.2035 of 2015
and
M.P.No.1 of 2015

1.Sabi Mohammed
2.S.Haajira ..Appellants/Petitioner

..vs..

1.D.Sumesh
2.G.Jayavelu
3.ICICI Lombard Motor Insurance Co. Ltd
No.140, Chota Bhai Centre,
Nungambakkam High Road,
Chennai - 600 014. ..Respondents/Respondents

Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 20.02.2013 passed in MCOP No.3544 of 2009 on the file of Motor Accidents Claims Tribunal, 17th Additional Court, Chennai.

For Appellant : Mr.K.R.Santhana Gopal
For R1 & R2 : Exparte before the Tribunal
For R3 : Mrs.R.Sree Vidya

JUDGMENT

(Judgment of the Court was delivered by R. SUBBIAH, J.)

Being not satisfied with the quantum of compensation awarded by the Motor Accidents Claims Tribunal, 17th Additional Court, Chennai (hereinafter referred to as 'the Tribunal') in and by an award dated 20.02.2013 made in MCOP.No.3544 of 2009, the present appeal has been directed by the legal representatives of one Sheik Mohammed, who died in a motor accident that had occurred on 07.06.2009, seeking enhancement of compensation.

2.The factual background is as under:

The appellants herein, who are the parents of the deceased, filed a claim petition in MCOP.No.3544 of 2009 stating that on 07.06.2009 at about 4.30am, while the deceased was returning in his motor cycle bearing Regn.No.TN05 R 4450 on the ECR Road, a milk van bearing Regn.No.TN22-BA-0101 belonging to the first respondent herein and insured with the third respondent insurance company, came in a rash and negligent manner from West to East direction at a hectic speed and dashed against the motor cycle of the deceased, due to which, the deceased sustained multiple fracture and died on the spot. Since the accident was caused due to the rash and negligent driving of the driver of the van, the appellants claimed compensation of Rs.30,00,000/- as against the owner, driver and insurer of the offending vehicle.

3.The third respondent insurance company filed a counter statement denying the various averments made in the claim petition by the claimants.

4.In order to prove the claim of the appellants, the first appellant/father of the deceased was examined as P.W.1, besides examining one Venkatesan and Devaraj as P.W.2 and P.W.3 and twelve documents were marked as Exs.P1 to P12. The third respondent insurance company neither examined any witness nor marked any document, in support of their case.

5.The Tribunal, on consideration of the oral and documentary evidence adduced by the parties, held that the accident had occurred on account of the rash and negligent driving of the driver of the van, due to which, the respondents 1 and 3 being the owner and the insurer of the van respectively, are liable to pay compensation to the claimants and accordingly, passed an award to the tune of Rs.12,02,000/- as compensation. Being not satisfied with the quantum of compensation awarded, the present appeal came to be filed by the claimants seeking enhancement of compensation.

6.The learned counsel for the appellants/claimants contended that the deceased was aged about 27 years at the time of accident, which is evident from Ex.P9-service certificate and Ex.P11-driving licence. That apart, he was earning a sum of Rs.2,25,000/- per annum, by working as a Customer Support Executive in a private concern at Chennai. But, the Tribunal has taken only a sum of Rs.10,000/- as the monthly income of the deceased, which is very low. Further, considering the age of the mother of the deceased, who was aged about 42 years at the time of accident, the Tribunal has adopted the multiplier '13' and added 40% of the salary of the deceased towards future prospects, for the purpose of determining the compensation under the head "loss of income", which are not correct. According to the learned counsel, taking note of the age of the deceased, who was 27 years old at the time of accident, the correct multiplier to be adopted is '17' and instead of 40%, 50% of the salary of the deceased is to be added towards future prospects, while calculating the compensation under the head 'loss of income'. Thus, learned counsel prayed that the compensation awarded under the head "loss of income" has to be recomputed and consequently, the award passed by the Tribunal has to be enhanced.

7.Per contra, the learned counsel for the third respondent insurance company made her submission, supporting the award passed by the Tribunal.

8.Heard both sides and perused the records.

9.Before the Tribunal, the appellants claimed that the deceased was aged about 27 years at the time of accident and was earning a sum of Rs.2,25,000/- per annum. To substantiate the same, the driving licence of the deceased was marked as Ex.P11, in which, his date of birth was mentioned as 31.01.1982, which would undoubtedly go to show that he was 27 years old at the time of accident. The service certificate of the deceased, which was alleged to have been issued by one M/s.Sutherland Global Service, was marked as Ex.P9, in which, the annual income of the deceased was shown as Rs.2,25,000/-. However, the Tribunal has rejected Ex.P9 document on the ground that neither any documents, such as, attendance register or wage register were marked nor the author of the document was examined to prove the contents of the same. Further, the Tribunal has pointed out that no income tax returns were filed to support the plea of the appellants that the deceased was an Income Tax Assessee. Accordingly, the Tribunal has fixed a sum of Rs.10,000/- as the monthly income of the deceased. In our considered view, in the absence of any documentary evidence to show that the deceased was earning a sum of Rs.2,25,000/- per annum, a sum of Rs.10,000/- fixed by the Tribunal as the monthly income of the deceased, cannot be found fault with and the same is hereby confirmed.

10.Yet another contention made by the learned counsel for the appellants is that the Tribunal ought to have considered the age of the deceased for selecting the multiplier and adding the quantum of percentage of salary towards future prospects, while computing the compensation under the head "loss of income". Such contention made by the learned counsel for the Appellants cannot be countenanced by this Court for the reason that except the appellants, who are the parents of the deceased, no other person is available in the capacity of legal representatives of the deceased. In such circumstances, considering the longevity of the mother of the deceased, who was 42 years old at the time of accident, we do not find any error in taking the age of the mother of the deceased for selecting the multiplier, while computing the compensation under the head "loss of income" by the Tribunal. However, based on the age of the mother, the correct multiplier to be adopted is "14" instead of "13", as per the decision of the Hon'ble Supreme Court in reported in (2009) 6 SCC 121 (Sarla Verma v. Delhi Transport Corporation and another) and the same is hereby fixed. Accordingly, the compensation under the head "loss of income" is recomputed as under:

Salary of the deceased	= Rs.10,000/-
Add 40% of Rs.10,000/- towards future prospects	4,000/-
	....
	Rs.14,000/-
Deduction at 50% towards personal expenses	7,000/-
	....
loss of monthly income	Rs. 7,000/-
	....

If the multiplier "14" is applied, then the loss of income to the parents of the deceased works out to Rs.11,76,000/- (Rs.7,000/- x 12 x 14). Thus, the sum of Rs.10,92,000/- awarded by the Tribunal is hereby enhanced to Rs.11,76,000/- under the head "loss of income".

11.With respect to the compensation awarded under other conventional damages, the Tribunal has awarded a sum of Rs.1,00,000/- towards loss of love and affection. Taking note of the fact that the appellants have lost their only son in the accident at his younger age, from whom, they expected lending a moral support at their advanced age, the sum of Rs.1,00,000/- awarded by the Tribunal is hereby enhanced to Rs.2,00,000/- under this count.

12.However, a sum of Rs.5,000/- each awarded by the Tribunal under the heads "funeral expenses" and "transportation" are fair, just and reasonable and the same are hereby confirmed. Similarly, the award of interest at 7.5% p.a. by the Tribunal seems to be very reasonable and the same is also hereby confirmed.

13.For the discussions held above, the total compensation awarded by the Tribunal is hereby enhanced to Rs.13,86,000/-, the details of which, are as follows:

Loss of income	-	Rs.11,76,000/-
Funeral expenses	-	Rs. 5,000/-
Loss of love and affection	-	Rs. 2,00,000/-
Transportation	-	Rs. 5,000/-
Total	-	Rs.13,86,000/-

14.In view of the above modification of the compensation amount awarded by the Tribunal, the first appellant is entitled to get Rs.6,00,000/- and the second appellant is entitled to get Rs.7,86,000/-. The third respondent Insurance Company is directed to deposit the entire amount as awarded by this Court, after deducting the amount already deposited, if any, along with interest at 7.5% per annum from the date of claim petition till the date of deposit and costs, to the credit of MCOP.No.3544 of 2009 on the file of the Motor Accidents Claims Tribunal, XVII Additional Judge, Chennai, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants are entitled to withdraw their respective shares lying in the deposit.

15.Accordingly, the Civil Miscellaneous Appeal is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-)

//True Copy//

Sub Assistant Registrar

rk
To
The Motor Accidents Claims Tribunal,
XVII Additional Judge, Chennai.

+1cc to Mr.K.R.Santhana Gopal Advocate, S.R.No. 76072/17

Pre-delivery Judgement in
C.M.A.No.2035 of 2015

VGII(CO)
TR(27/11/2017)