IN THE JUDICATE OF MADRAS HIGH COURT

DATE : 21.07.2017

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THE HON'BLE MR.JUSTICE R.SUBBIAH
and
THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

C.M.A.No.2199 of 2016

1.Ms.Manikam @ Manika Veena
2.Ms.Mallika Devi
3.Ms.Suganya
4.Ms.Geetha Priya ... Appellants

Vs.

1.Ajeez
2.M.Ibrahim
3.Oriental Insurance Co.Ltd.,
AA Complex 1st Floor,
No.159, Kumaran Road,
Tirupur-641 601. ... Respondents

Appeal has been filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 06.06.2011 in M.C.O.P.No.746 of 2009 passed by the Motor Accidents Claims Tribunal [Additional District & Sessions Judge (FTC-3)] at Coimbatore.

For Appellants : Mr.Ananda Gomathy Sivakumar
For Respondents: Mrs.C.Harini for Mr.N.Vijayaraghavan (for R3)

JUDGMENT

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

Not being satisfied with the quantum of compensation awarded by the Motor Accidents Claims Tribunal [Additional District & Sessions Judge (FTC-3)] vide judgment and decree dated 06.06.2011 in M.C.O.P.No.746 of 2009, awarding a sum of Rs.17,06,000/- as total compensation as against the claim of Rs.50,00,000/-, the present appeal has been filed by the appellants/claimants.

2.The appellants/claimants are the wife and married daughters of the deceased K.Subramaniam. It is the case of the appellants/claimants that on 04.01.2009 at about 7.00 pm the said Subramaniam along with the 1st appellant/wife was proceeding from Erode to Coimbatore in his Tata Indigo car bearing Registration No.TN 37 AP 2842, which was driven by his driver S.Prakash. When the said car was nearing Arokya Milk Dairy premises in Nalligoundenpalayam Pirivu in NH-47 Highway, a Tata delivery van bearing Reg.No.TN 37 AU 4457 driven by the 1st respondent came at a hectic speed in a rash and negligent manner from west to east and dashed against the car in which the said Subramaniam was travelling, as a result of which, the said Subramaniam sustained grievous injuries all over his body and he was rushed to KMCH Hospital, Coimbatore. Despite the best treatment given to him, he succumbed to his injuries on 07.01.2009. Hence, the appellants herein, who are the legal heirs of the deceased Subramaniam, made a claim before the Tribunal for a sum of Rs.50 lakhs.

3.The claim of the claimants was resisted by the Insurance Company (3rd respondent herein), stating that the accident had occurred only due to the rash and negligent driving of the driver of the car in which the deceased was travelling.

4.Before the Tribunal, in order to prove the claim, on the side of the claimants, the wife of the deceased examined herself as P.W.1 and 2nd claimant was examined as P.W.2, besides examining one G.Sankar as P.W.3 and driver of the car as P.W.4 and twenty six documents were marked as Ex.P.1 to Ex.P.26. On the side of the respondents, neither oral nor documentary evidence was adduced.

5.The Tribunal, after analysing the entire evidence, has come to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the Tata delivery Van bearing Reg.No.TN 37 AU 4457, which was insured with the 3rd respondent/Insurance Company. By coming to such a conclusion, the Tribunal has calculated the compensation and passed an award for a total sum of Rs.17,05,200/-. Now, the present appeal has been filed by the claimants contending that the compensation amount awarded by the Tribunal is not an adequate compensation.

6.It is the submission of the learned counsel for the appellants/claimants that with regard to the loss of income, it is the case of the claimants that the deceased Subramaniam was carrying on business in machine tools as the sole Proprietor of M/s.Alltech Engineering. That apart, he was a Director in another company viz., Confident Engineering India (P) Ltd., and as such, he was earning more than a sum of Rs.75,000/- per month. In order to prove the income earned by the deceased Subramaniam, the claimants have also marked a letter addressed to the Tax Department as Ex.P.23. But, the Tribunal has rejected the said letter (Ex.P.23) stating that it cannot be taken as a reliable document to come to the conclusion that the business run by the partners is not functioning now. Thus, by coming to such a conclusion, the Tribunal has taken a sum of Rs.3,15,000/- as the annual income drawn by the deceased as Director of Confident Engineering India (P) Ltd, as loss of income. That apart, the Tribunal added another sum of Rs.50,000/- along with Rs.3,15,000/-, on the reasoning that after the demise of the said Subramaniam, the claimants ought to have appointed some responsible person to run the concern M/s.Alltech Engineering and in that way, the appellants would have incurred Rs.50,000/- per month to pay salary to him. Thus, the Tribunal has fixed a sum of Rs.3,65,000/- as loss of income and made the calculation on that basis. Since the deceased was aged 60 years at the time of accident, the Tribunal applied the multiplier 7 and arrived at a sum of Rs.25,55,000/- (3,65,000/- x 7). Thereafter, the Tribunal deducted a sum of Rs.2,55,000/- towards income tax and 1/3rd amount towards personal expenses; thus, the Tribunal arrived at a sum of Rs.15,33,000/- as loss of income.

7.The learned counsel for the appellants/claimants submitted that the sum of Rs.15,33,000/- awarded by the Tribunal towards loss of income is not an adequate compensation. The Tribunal has not assigned any valid reason for rejecting Ex.P.23 (letter sent to the Tax Department), which was filed by the claimants to show that the business of M/s.Alltech Engineering, which was run by the deceased, was closed after the demise of the said Subramaniam. Thus, the learned counsel for the appellants/claimants submitted that by considering the income earned by the deceased from M/s.Alltech Engineering, the compensation amount awarded by the Tribunal has to be enhanced.

8.Per contra, the learned counsel for the Insurance Company made a detailed submission by supporting the award passed by the Tribunal.

9.Keeping in view the submissions made on either side, We have carefully gone through the entire materials available on record.

10.It is the main contention of the learned counsel for the appellants/claimants that the deceased Subramaniam was running the business viz., M/s.Alltech Engineering as proprietor and he was earning Rs.75,000/- per month from the said business. After his demise, the said business was closed. In order to show that the said business was closed after the demise of Subramaniam, Ex.P.23-letter to the Income Tax Department was marked on the side of the claimants before the Tribunal. But, the Tribunal has rejected the said document Ex.P.23 and added only a sum of Rs.50,000/- to the loss of income of Rs.3,15,000/-, by rendering a finding that after the demise of the said Subramaniam, claimants would have engaged some other person to run the said business and in that way, they would have incurred at least Rs.50,000/- per month to pay salary to him. Assailing the said finding of the Tribunal, the learned counsel for the appellants/claimants submitted that by relying upon Ex.P.23, the Tribunal ought to have fixed at least a sum of Rs.75,000/- per month as loss of income from M/s.Alltech Engineering; therefore, the amount awarded by the Tribunal has to be modified by taking a sum of Rs.75,000/- per month as loss of income from M/s.Alltech Engineering.

11.But, in our considered opinion, after the demise of the said Subramaniam, it would be difficult for the wife and daughters to run the said business (M/s.Alltech Engineering). Though the Tribunal has rendered a finding that the claimants would have engaged some responsible third person to lookafter the business, it is not based on any legal evidence. Therefore, We are of the opinion that after the demise of the said Subramaniam, certainly the wife of the deceased would not be in a position to run the business. Therefore, it would be appropriate to fix a reasonable amount as loss of income from M/s.Alltech Engineering business. As such, We are of the opinion that a sum of Rs.2,50,000/- per annum could be fixed as loss of income from M/s.Alltech Engineering business. Consequently, the amount of Rs.50,000/- added by the Tribunal along with Rs.3,15,000/- is hereby set aside. In view of the said modification, the total annual income of the deceased would come to Rs.5,65,000/- (3,15,000 + 2,50,000/-). If 20% is deducted towards Income tax, the balance amount comes to Rs.4,52,000/- (5,65,000 - 1,13,000 = 4,52,000/-). If multiplier 7 is applied, then the amount comes to Rs.31,64,000/- and 1/3rd amount is deducted towards personal expenses, it comes to Rs.21,09,333/- (3164,000 - 10,54,667 =21,09,333/-), which could be the just and fair compensation under the head of Loss of Income.

12.That apart, the Tribunal has awarded a sum of Rs.1,38,000/- for medical expenses, which is supported by medical bills; hence, the same requires no modification. The Tribunal has awarded only a sum of Rs.20,000/- for the loss of love and affection, which is on the lower side; hence, the same is hereby enhanced to a sum of Rs.1,50,000/-. Similarly, since the sum of Rs.5,000/- awarded by the Tribunal for funeral expenses is on the lower side, the same is hereby enhanced to Rs.15,000/-. The Tribunal has awarded only meagre amount of Rs.5,000/- as loss of consortium; hence, the same is hereby enhanced to Rs.75,000/-. Since the amount of Rs.5,000/- awarded by the Tribunal for transportation is on the lower side, the same is hereby enhanced to Rs.13,000/-. Thus, the compensation amount of Rs.17,05,000/- awarded by the Tribunal is hereby modified and enhanced to a sum of Rs.25,00,333/-, rounded off to Rs.25,00,000/-. The break up details of the modified/enhanced compensation amount are as follows_

Loss of Income	= Rs.21,09,333/-
Medical Expenses	= Rs. 1,38,000/-
Loss of Consortium	= Rs.75,000/-
Loss of love and affection	= Rs. 1,50,000/-
Funeral expenses	= Rs.15,000/-
Transportation	= Rs.13,000/-
	Rs.25,00,333/- (rounded of to Rs.25,00,00/-)

In the result, the appeal is partly allowed and the total compensation amount of Rs.17,05,000/- (Rupees seventeen lakhs and five thousand only) awarded by the Tribunal is hereby modified and enhanced to a sum of Rs.25,00,000/- (Rupees twenty five lakhs only). The Insurance Company is directed to deposit the said total compensation amount, after deducting the amount if any already deposited, with interest at the rate of 7.5% per annum from the date of petition till the date of deposit, before the Tribunal, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the 1st claimant/wife is entitled to withdraw Rs.15 lakhs with proportionate interest and the claimants 2 to 4/daughters are entitled to withdraw the balance amount in equal share with proportionate interest, by making necessary application before the Tribunal. No costs.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

ssv

To,

1.The Motor Accidents Claims Tribunal
(Addl Dist & Session Judge - FTC-3)
Coimbatore.

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

+ 1 cc to Mr.Ananda Gomathy Advocate,SR.51836

+ 1 cc to Mr.N.Vijayaraghavan Advocate,SR.51642

C.M.A.No.2199 of 2016

GMI(CO)
NR 10/11/2017