IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.03.2017

CORAM:

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

C.M.A.No.2367 of 2016 and
C.M.P.No.16486 of 2016

The Branch Manager,
M/s New India Assurance Branch Office,
No.39-c,Bye Pass Road,
Dharmapuri ... Appellant/Respondent-2

vs.

1.Mrs. K.Saraswathi
2. Mr.Prakash ..Respondents 1 & 2/Petitioners 1 & 2
3. V.Sellappan ...Petitioner-3/1st respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Order and Decreetal Order in MCOP No.294 of 2015 dated 30.03.2016 on the file of District Judge, Motor Accidents Claims Tribunal (Special District Court), Krishnagiri.

For Appellant : Mr.J.Chandran

For Respondents: Mr.Mukund R.Pandiyan (for R1 & R2)
R3- Died

J U D G M E N T

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

Quantum of compensation of Rs.23,90,000/- with interest at the rate of 7.5% per annum, from the date of claim, till the date of deposit and costs awarded in M.C.O.P.No.294 of 2013 dated 30.03.2015, on the file of Motor Accidents Claims Tribunal (Special District Judge), Krishnagiri, to the parents of the deceased, aged 19 years, at the time of accident and first year student of B.E. Degree Course in Mechanical Engineering, in Mahendra Institute of Technology at Vadugampalayam, Nammal District, is assailed on the grounds inter alia that the Tribunal erred in determining the monthly income of the deceased as Rs.20,000/- for the purpose of computing the loss of contribution to the family, without any documentary evidence.

2. Supporting the prayer sought for Mr.J.Chandran, learned

https://hcservices.ecourts.gov.in/hcservices/

counsel appearing for the insurance company contended that the deceased was a non-earning member and therefore, the Tribunal ought to have taken the notional income, as per the schedule II to Section 163-A of the Motor Vehicles Act, 1988, for computing the loss of contribution to the family.

3. Mr.Mukund R. Pandiyan, learned counsel for the caveators submitted that there is no error in the award. He pointed out that the tribunal has failed to consider future prospects of the deceased, while awarding compensation.

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

5. As the challenge is restricted only to the quantum of compensation, there is no need to advert to the aspect of negligence and liability.

6. To prove that the deceased was a first year student of B.E.(Mechanical Engineering), respondents 1 & 2 / Claimants have produced Ex.P5, photostat copy of certificate issued by the Mahendra Institute of Technology, Ex.P6 and Ex.P7, mark statements of the deceased in standard XII and standard X, respectively and Ex.P8, copy of the first year progress report of Mahendra Institute of Technology.

7. For the purpose of determining the income of the deceased, the Tribunal has taken note of the decision of the Delhi High Court in Ramesh Chand Joshi /vs/ New India Assurance Company Limited [MAC App.No.212-213/06 dated 20.01.2010], wherein the Court has considered a case of a 1st year student of Bachelor of Engineering (Bio Technology) in Delhi College of Engineering. In the said case, the tribunal awarded Rs.3,25,000/- as compensation. When the parents of the deceased sought for enhancement, the Delhi High Court issued notice to the Dean of Delhi College of Engineering, to place on record the average salary of a fresh engineering graduate. Responding to the same, the Joint Registrar, Delhi College of Engineering, has filed an affidavit along with a chart giving the average salary as Rs.38,333/- per month drawn by the graduates of Biotechnology from Delhi College of Engineering during 2009. On that basis the Delhi High Court in Ramesh Chand Joshi's case fixed the income of the deceased therein as Rs.26,833/-, after deducting income tax and enhanced the compensation.

8. In the instant case, tribunal has also taken note of another decision of Delhi High Court, in Meenu Tognatta /vs/ National Insurance Company Limited, [MAC App.No.238/12 dated 20.04.2012], wherein, due to the accident, two Engineering students died. Taking note of the entry level salary fixed by the Government for engineering students, the Delhi High Court fixed the income as Rs.18,000/-.

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

9. Reverting to the case on hand, the tribunal has fixed the monthly income of the deceased Sarath Babu, First Year student of B.E. Degree Course in Mechanical Engineering as Rs.20,000/-. As rightly pointed out by Mr.Mukund R.Pandiyan, learned counsel for the respondents/claimants, the tribunal has not taken into consideration, future prospects of the deceased, who was just 19 years old, at the time of accident. Education has to be respected. Even an Office Assistant in an organized Sector would be paid a sum of Rs.10,000/-, as an entry level salary. Though the respondents have not produced any document to prove that the entry level salary of a Mechanical Engineering Graduate in Government or other public Sector undertakings would be around Rs.20,000/- or so, taking note of the fact that the Tribunal has not considered the future prospects of the deceased and also of the fact that the same amount is taken into consideration for computing the loss of contribution to the family for 18 years, we are of the view that there is no need to interfere with the method adopted by the tribunal.

10. Deceased was a bachelor. After determining the monthly income of the deceased as Rs.20,000/-, the tribunal has deducted 50% of the same towards the personal and living expenses of the deceased, thus, taken only Rs.10,000/- as income for the entire period. Tribunal has awarded compensation of Rs.21,60,000/- under the head loss of contribution to the family. A sum of Rs.2 Lakhs has been awarded under the head loss of love and affection. Sum of Rs.20,000/- and Rs.10,000/-, awarded for funeral expenses and transportation charges, respectively, cannot be said to be excessive. There is no award under the head loss of estate and conventional damages. Quantum of compensation of Rs.23,90,000/- with interest, at the rate of 7.5% per annum, from the date of claim till the date of deposit and costs, cannot be said to be grossly excessive warranting interference. Hence, Civil Miscellaneous Appeal is dismissed. No Costs. Consequently, the connected Miscellaneous Petition is closed.

WEB COPY

11. Mr.J.Chandran, learned counsel for the Insurance Company submitted that 50% of the award amount with proportionate interest and costs, has already been deposited to the credit of MCOP No.294 of 2013, on the file of Motor Accidents Claims Tribunal (Special District Court), Krishnagiri.

12. Therefore, the appellant-Insurance company is directed to deposit the balance award amount with proportionate interest and costs to the credit of MCOP No.294 of 2013, on the file of Motor Accidents Claims Tribunal (Special District Court),

Krishnagiri, within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the claimants are permitted to seek for withdrawal of the same, by making necessary applications before the tribunal.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

ars

To
The District Judge,
The Motor Accident Claims Tribunal,
(Special District Court), Krishnagiri

+1cc to Mr.Mukunth Pandiyan,Advocate sr.15209

+1cc to Mr.J.Chandran,Advocate sr.15428
Copy to:
The Section Officer,VR Section,High Court, Madras.

C.M.A.No.2367 of 2016 and
C.M.P.No.16486 of 2016

br(co)
ss(20/4/2017)

सत्यमेव जयते
WEB COPY