IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.01.2017

CORAM:

THE HON'BLE DR. JUSTICE S.VIMALA

Civil Miscellaneous Appeal No.2380 of 2016
& C.M.P.No.19419 of 2016

1. Mary Clement
2. Minor. Lurthu Sundari Lintha
3. Minor. Therasa Rajivi
(Minors / 2 and 3 appellants were represented by their mother and natural guardian, first Appellant) ... Appellants/Petitioners

..Vs..

1. R.Rajendran
2. The United India Insurance Co. Ltd., Third Party Cell, Regional Office, No.45 Moore Street, Parrys, Chennai 600 001 ... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree, dated 31.10.2007, made in MACTOP No.3483 of 2006 on the file of the Motor Accident Claims Tribunal, Chief Judge, Small Causes Court, Chennai.

For Appellants : Mr. F.Terry Chellaraja

For Respondent No.2: M/s. Dhiraviyanathan

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J U D G M E N T

In a claim petition filed by the first claimant (wife), second and third claimants (daughters), claiming compensation in respect of the death of the deceased Clement, aged 48 years, Milk Vendor cum Tailor, earning a sum of Rs.6,000/- per month, the Tribunal has awarded a sum of Rs.3,14,000/-, as compensation.

2. With regard to the quantification, the Tribunal has taken the monthly income at Rs.3,000/- per month and deducting Rs.1,000/- towards personal expenses and taking the monthly contribution at Rs.2,000/- and adopting the multiplier of '11', the loss of dependency has been assessed at Rs.2,64,000/-. Awarding Rs.20,000/- towards loss of consortium, Rs.25,000/- towards loss of love and affection and loss of expectation of life and Rs.5,000/- towards the funeral expenses, the Tribunal has awarded a sum of Rs.3,14,000/- as compensation.

3. The learned counsel appearing for the appellants / claimants would submit that the Tribunal neither fixed the monthly income correctly nor has taken into account the future prospective increase in earning and therefore, the loss of dependency awarded is grossly inadequate.

3.1. The learned counsel appearing for the second respondent / Insurance Company would point out that the accident was in the year 2006 and therefore, the monthly income taken for the year 2006 is fairly reasonable and during that time, the principle of taking future prospective increase in income was not there and therefore, the amount as awarded by the Claims Tribunal ought to be confirmed as such.

4. The learned counsel for the appellants / claimants relied upon the decision reported in 2013 (2) TNMAC 565 (SC) (Sanobanu Nazirbhai Mirza and others v. Ahmedabad Municipal Transport Service) wherein, for the accident of the year 1998, the Hon'ble Supreme Court has considered the quantum on the heads of loss of dependency, loss of consortium / loss of love and affection as well as the loss of future prospective increase in income.

4.1. In case of the accident, which took place in the year 1998, the loss of love, care and guidance to minor children has been awarded at Rs.1,00,000/-, funeral expenses has been awarded at Rs.25,000/-, loss of dependency has been enhanced from Rs.2,16,000/- to Rs.14,40,000/-.

5. Relying upon the principles laid down in the case cited supra, if the monthly income of the deceased is fixed at Rs.3,000/-, deducting 1/3rd towards the personal expenses and adding 50% towards future prospective increase in income and adopting the multiplier of 11, the total loss of dependency would be (Rs.3,000/- (-) Rs.1,000/-: Rs.2,000/- (+) Rs.1,000/- : Rs.3,000/-x12x11 : Rs.3,96,000/-. Awarding compensation of Rs.2,00,000/- (Rs.1,00,000/- each) towards the loss of love and affection to the second and third claimants (daughters) and Rs.50,000/- towards the loss of consortium to the first claimant (wife) and Rs.25,000/- towards the cremation expenses, the total compensation payable would be Rs.6,71,000/-.

6. In the result, this Civil Miscellaneous Appeal is allowed-in-part, by enhancing the total compensation from Rs.3,14,000/- to Rs.6,71,000/- and this amount of compensation shall be deposited by the second respondent / Insurance Company, less the amount already deposited (also less the period of condone delay (2939 days) in filing / representing the Appeal), along with interest at 7.5% per annum, from the date of petition till the date of deposit, within a period of four weeks from the date of receipt of a copy of this judgment. Out of the said

compensation, the wife / first claimant / first appellant is entitled to a sum of Rs.2,71,000/- and the daughters / second and third claimants / second and third appellants are entitled to a sum of Rs.2,00,000/- each. The major claimant / appellant 1 herein is permitted to withdraw her share of compensation lying in court deposit and the share of the minor claimants / appellants 2 and 3 shall be invested in a Fixed Deposit, Reinvestment Scheme, for a period of three years, and renewable thereafter, till the minors attain majority and the interest accrued thereon shall be withdrawn by the natural guardian of the minors / first appellant herein, once in three months, directly from the Bank under intimation to the Tribunal. No costs. Consequently, the connected CMP is closed.

Sd/-
Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

srk

To

1. Motor Accident Claims Tribunal, Chief Judge,
   Small Causes Court, Chennai.

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

+1cc to Mrs.M.Malar,Advocate sr.3881

+1cc to Mr.A.Dhiraviyanathan,Advocate sr.3810

C.M.A.No.2380 of 2016
& C.M.P.No.19419 of 2016

scd(co)
ss(18/4/2017)