IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2017

CORAM:

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

C.M.A.No.2667 of 2015
C.M.P.No.7100 of 2017

1. B.Sangeetha
2. S.Thulukkanam .. Appellants

versus

1. OMR Travel Access Pvt. Ltd.,
No.2/262, Gowri Thangaraj Street,
Navalur, Chennai 600 073.

2. ICICI Lombard General Insurance Co. Ltd.,
No.140, Numgambakkam High Road,
II Floor, Chottabai Centre,
Nungambakkam, Chennai-34. .. Respondents

Prayer: Civil Miscellaneous Appeal is filed, against the judgment and decree in M.C.O.P.No.5109 of 2012, dated 04.03.2015, on the file of the learned Motor Accident Claims Tribunal (II Small Causes Court), Chennai.

For Appellant : Mr.Chitambaram
for Mr.K.Varadha Kamaraj

For 2nd Respondent : Mrs.Srividya

JUDGMENT

(Judgement of the Court was made by M.GOVINDARAJ, J.)

Not satisfied with the quantum of compensation of Rs.20,11,000/-, awarded by the Motor Accident Claims Tribunal (II Small Causes Court), Chennai, passed in M.C.O.P.No.5109 of 2012, dated 04.03.2015, the claimants have preferred this appeal, seeking enhancement.

2. Award is mainly challenged on the ground that the monthly income of the deceased, fixed by the Tribunal, is on the

lower side. According to the claimants, at the time of accident, the deceased was working as Officer-Commercial in M/s.Souter Race Technologies Pvt. Ltd., Chennai and earned Rs.25,162/- per month. In support of the said statement, Salary Slip for the month of May' 2012, has been marked as Ex.P8, with objections.

3. Upon perusal of the same, the Claims Tribunal, found that the salary slip was issued by Carrier Race Technologies Ltd. In order to substantiate the statement and to prove the salary, nobody was examined, on the side of the respondents/claimants. Therefore, the Tribunal has refused to rely on Ex.P8, which was marked with objections, for the purpose of fixation of monthly income. The Tribunal has taken the monthly income at Rs.9,000/-.

4. When the matter was taken up for final disposal before this Court, learned counsel appearing for the appellants wanted to file a petition to receive additional evidence. Accordingly, he filed C.M.P.No.7100 of 2017, to receive the bank statement, for the period between 01.01.2010 and 30.06.2012, as additional evidence. Opposing the said petition, the 2nd respondent-Insurance Company has filed a counter. After hearing the arguments of the learned counsel for the parties, this Court allows the said petition and the document has been received as Ex.P13.

5. Upon perusal of Ex.P13, Bank Statement of the deceased, it could be deduced that from 10.06.2017, salary has been debited in his account. His initial salary was Rs.16,317/- and for the month of September' 2011, the salary debited was Rs.17,739/-. However, during the months of October and December' 2011, it was shown as Rs.19,800/-. Finally, his last drawn salary for January' 2012, is shown as Rs.18,433/-. Thereafter, entry made on 01.03.2012, shows that the salary was Rs.14,967/-.

6. From the above, we can deduce that the deceased was working in a private company and received a sum of Rs.16,317/- for a longer period. Normally, during the month of March, there would be deduction towards income-tax and therefore, we can safely infer that he was earning the monthly salary around Rs.14,967/-. However, Ex.P8 - Salary Slip, marked before the Tribunal, shows that he was drawing a sum of Rs.23,419/-.

7. As rightly contended by the learned counsel for the 2nd respondent-Insurance Company that the above certificate does not contain any seal and signature, to prove its veracity. Therefore, the Tribunal has rightly refused to rely on Ex.P8 - Salary Certificate. However, from the bank statement, marked as Ex.P13, it could be deduced that last drawn salary of the deceased, as on 01.03.2012, was Rs.14,967/-.

8. Accident had taken place on 21.06.2012. Last salary of the deceased, proximate to the date of accident, can be taken as Rs.14,967/- as against Rs.9,000/-, fixed by the Tribunal. By fixing the monthly income as Rs.9,000/-, the Tribunal has awarded Rs.18,36,000/- under the head, loss of contribution to the family. In the present day consumer price index, a casual labourer is earning Rs.300/- to Rs.500/- per day. Whereas, the Bank statement, which marked as Ex.P.13 shows the salary of the deceased as Rs.14,967/- per month. Ex.P8 - Salary Certificate, marked by the claimants, shows that there was deduction towards Provident Fund, Professional Tax, PPS and other deductions and therefore, we could reasonably fix the monthly income as Rs.15,000/- per month, after the statutory deductions.

9. On the date of accident, the deceased was aged 29 years. The Tribunal, on the basis of the decision in Sarla Verma v. Delhi Transport Corporation Ltd., reported in 2009 (2) TNMAC 1 (SC), has rightly found that 50% can be added towards future prospects. Since we fixed the the monthly salary as Rs.15,000/-, as per Ex.P13, by adding 50% towards future prospects, the income is calculated at Rs.22,500/- (Rs.15000 + Rs.7500), as income of the deceased, at the time of death. Thus, annual income is arrived at Rs.2,70,000/- (Rs.22,500 x 12).

10. For the Financial Year 2012-13, Income-Tax exemption was given upto Rs.2 Lakhs and therefore, the income drawn by the deceased, will not attract any income-tax. Therefore, for the purpose of loss of contribution to the family, we propose to calculate the income, without any deduction, towards income-tax. At the time of accident, the deceased was aged about 29 years. Following the decision made in Sarla Verma's case (cited supra), corresponding to the age of the deceased, the Tribunal applied '17' multiplier. Applying the said multiplier to the income of the deceased, the loss of annual income, works out to Rs.45,90,000/-. Wife and mother of the deceased are the claimants. Therefore, 1/3rd deduction has to be made towards the personal and living expenses of the deceased. After deducting 1/3rd towards the same, loss of contribution to the family works out to Rs.30,60,000/-.

11. The Tribunal has awarded Rs.1,00,000/- towards loss of consortium, Rs.50,000/- for loss of love and affection and Rs.25,000/- towards funeral expenses. Compensation awarded by the Tribunal, under the above heads, is just and reasonable and in terms of Rajesh and Others v. Rajbir Singh and Others reported in 2013 (2) TNMAC 55 (SC), which does not require any interference.

12. However, the Claims Tribunal has failed to award any amount towards transportation, loss of estate and conventional

damages. Therefore, we are inclined to award Rs.10,000/- towards transportation, Rs.10,000/- towards loss of estate and Rs.2,000/- for the damages to clothes and articles. Thus, the compensation is now re-worked to Rs.33,07,000/-, as under:

Loss of contribution to the family	: Rs. 30,60,000 /-
Love of consortium	: Rs. 1,00,000/-
Loss of love and affection	: Rs. 50,000/-
Funeral Expenses	: Rs. 25,000/-
Transportation	: Rs. 10,000/-
Loss of estate	: Rs. 10,000/-
Damages to clothes and articles	: Rs. 2,000/-
	: Rs. 33,07,000/-

13. In view of the above, this Civil Miscellaneous Appeal is partly allowed. After refixation of the monthly salary, the compensation amount is now increased by Rs.12,96,000/-. Out of total compensation, now determined by this Court, a sum of Rs.7,96,000/- is apportioned to the wife and Rs.5,00,000/- is apportioned to the mother. The 2nd respondent-Insurance Company is directed to deposit the enhanced compensation amount, now determined by this Court, less the amount already deposited, with proportionate interest and accrued costs, to the credit of M.C.O.P.No.5109 of 2012, on the file of the learned Motor Accident Claims Tribunal (II Small Causes Court), Chennai, within a period of four weeks, from the date of receipt of a copy of this order. On such deposit being made, the appellants/claimants are permitted to withdraw the amount, after making necessary applications before the Tribunal. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

skm

To

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

Copy to:

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

+ 1 cc to Mrs.Srividya Advocate,SR.44906

+ 1 cc to Mr.K.Varadha Kamaraj Advocate,SR.44721

C.M.A.No.2667 of 2015
C.M.P.No.7100 of 2017

nr 06/04/2018