IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.07.2017

CORAM:

THE HON'BLE DR. JUSTICE S.VIMALA

Civil Miscellaneous Appeal No.1787 of 2017

Sadasivam (died)
1. Eswari, W/o.Sadasivam
2. Velmurugan, S/o. Sadasivam
3. Manju, D/o. Sadasivam
   Alagammal(died) ... Appellants/Petitioners

Cause title accepted vide order dated 7.7.14 made in MP.No.1/2014 in CMA.Sr.No.13832/2014

..Vs..

1. Nagalakshmi, W/o. Madheswaran
2. United India Insurance Co. Ltd.,
   Branch Office, 111, 137, D Cherry Road,
   Salem 636 001
3. Viswanathan, S/o. Muthu Gounder
4. National Insurance Co. Ltd.,
   Branch I, Promenend Road, Cantonment,
   Trichy - 1 ... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set-aside the order made in MCOP No.342 of 2008 on the file of the Motor Accident Claims Tribunal cum Subordinate Judge, Trichengode, dated 06.07.2012.

For Appellants : Mr. C.Kulanthaivel
For Respondents: Mr. T.Ravichandran, for R-2
R-1, R-3 and R-4 - Notice Dispensed with.

J U D G M E N T

Originally, the claim petition has been filed by the injured himself, claiming compensation of Rs.30,00,000/-.

2. The injured, Sadasivam, aged 50, an Income Tax assessee employed in doing scrap iron business, running AVM Earth Movers and AVM Tippers and was also doing agricultural work, earning a sum of Rs.50,000/- per month, met with an accident, on 25.11.2003.

3. The Tribunal, on a consideration of the materials placed before it, awarded compensation of Rs.16,33,234/-. Aggrieved over inadequacy of compensation, the injured has filed this Appeal.

3.1. During the pendency of the claim petition, the injured died and the legal representatives were impleaded as P-2 to P-5, as per the order passed in I.A.No.1532 of 2005, dated 25.11.2005. During the pendency of the Appeal, the fifth claimant, Alagammal was reported dead and with regard to the consequential amendment, the cause title was accepted by the order, dated 07.07.2014. Later, the second claimant also reported dead.

4. An important issue regarding the cause of death, namely, whether the death of the injured was on account of the injuries sustained in the accident or not, has not been raised at all.

4.1. Quantum alone is under challenge in this Appeal.

5. The breakup details of the award passed by the Tribunal below would give the picturization regarding the items considered for grant of compensation:-

Pecuniary Loss : Notional monthly income Rs.4,000/- - 1/4th : Rs.3,000/-x12x13-		Rs. 4,68,000.00
Damage to clothing and articles	-	Rs. 2,000.00
Medical expenses	-	Rs.10,38,234.00
Pain and sufferings	-	Rs. 50,000.00
Loss of love and affection	-	Rs. 5,000.00
Consortium to wife	-	Rs. 5,000.00
Funeral expenses	-	Rs. 5,000.00
		Rs.16,33,234.00

6. The learned counsel appearing for the appellant would submit that the award under the heads of loss of love and affection, consortium and funeral expenses are extremely low and the Tribunal is not right in not awarding Transport Expenses, especially when the medical expenses itself was to the tune of Rs.10 lakhs.

6.1. This contention is well founded and the compensation under the heads of loss of love and affection, consortium, funeral expenses have to be enhanced and transport expenses have to be awarded. Just because medical expenses are awarded which does not include transport expenses, the claim for transport expenses cannot be rejected.

6.2. Consortium to wife is awarded at Rs.50,000/-, loss of love and affection is awarded at Rs.1,00,000/-, transport expenses at Rs.20,000/- and funeral expenses at Rs.10,000/- are awarded.

7. The main ground of challenge is, with regard to the fixing of monthly income and multiplier adopted, while quantifying the compensation for loss of income.

7.1. According to the learned counsel for the appellants, the multiplier should be 13; the monthly income should be fixed at Rs.12,000/-; 30% increase should be considered towards future prospective increase in income.

7.2. On the other hand, the learned counsel appearing for the second respondent / Insurance Company would submit that the income should not exceed Rs.11,000/- per month; multiplier should be '11' only and 30% future prospective increase in income cannot be considered, as the injured had not been earning standard and regular income.

7.3. The learned counsel for the appellants would submit that the Tribunal committed a grave mistake in fixing the notional income at Rs.4,000/-; when the documents have been filed showing the income and especially when documents pertaining to Income-Tax returns are filed, which are documents filed as per the mandate in the statute, which cannot be likely disregarded, the Tribunal committed mistake in not relying upon the income tax returns.

8. It is appropriate to rely upon the decision of the Andhra Pradesh High Court, in the case of M.Posham And Another vs S. Kalavathi And Others, (decided on 25 August, 2014) in which, the circumstances under which the Court can take notional income has been highlighted. The important observation reads as under:-

> "The notional income of Rs.15,000/- as provided in item No.6 of Second Schedule appended to M.V.Act applies to those persons who had admittedly no income prior to the accident. The heading to Item No.6 which reads as Notional income for compensation to those who had no income prior to accident, itself is self-explanatory in this regard. Should we give a plain meaning to the words who had no income prior to accident we understand that they refer to those persons who admittedly had no income prior to accident. We can visualize those persons as old and infirm, bed ridden by sickness and those who had no earning capacity. In respect of those persons, notional income has to be taken as Rs.15,000/- for computation of compensation.

However, honestly speaking the said notional income will not apply to other persons who are able bodied persons and having earning potentiality and those who are employed in one or other avocation and earning some income. In respect of such persons even if there is no concrete evidence regarding their earnings, the Court shall make a reasonable estimate of their earnings having regard to their age, nature of occupation etc...”

9. It will be relevant to quote the decision of the Hon'ble Apex Court reported in the case of Shashikala & Ors vs Gangalashmamma & Anr (decided on 13 March, 2015) in order to support the proposition that in case of Income Tax assessees having a steady income, addition of income in respect of future prospective increase is justified. The relevant observation reads as under:-

“... Therefore, taking into account the age of the claimant (25 years) and the fact that he had a steady income, as evidenced by the income tax returns, we are of the view that an addition of 50% to the income that the claimant was earning at the time of the accident would be justified.”

9.1. In the context of the decisions cited supra it is evident that the Tribunal should not have adopted notional income when the injured is shown to have been a person earning to the extent of paying income-tax and therefore, there is no question of applying notional income in the case of the injured. Therefore, the notional income fixed cannot be accepted.

10. Considering the materials placed before this Court, the submissions made by the learned counsel for both sides and the legal propositions enunciated supra, the monthly income of the deceased can be taken at Rs.12,000/- per month. Having regard to the date of birth as entered in the Income tax returns, as 29.05.1953, the age must be '50' at the time when the injured suffered the accident. But only during the year 2005, impleading petition has been filed. Therefore, during 2005, the age of the deceased must be 51. Therefore, the multiplier to be adopted is '11'.

11. Taking the monthly income at Rs.12,000/-, adding 50% towards future prospects and deducting 1/3rd towards the personal expenses, adopting the multiplier of '11' the loss of dependency would be Rs.13,72,800/- (Rs.12,000/- + 30% (Rs.3,600) = Rs.15,600-1/3rd (Rs.5,200/-) : Rs.10,400x12x11). Thus, the total compensation payable would be Rs.26,43,034/-.

12. In the result, the award is enhanced from Rs.16,33,234/- to Rs.26,43,034/-. The entire amount of compensation shall be deposited, less the amount already deposited, 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.

13. It is reported that, pending this Appeal, the first and fourth claimants reported dead. Hence, the remaining claimants, i.e., son and the daughter, claimants 2 and 3 / appellants 2 and 3, are entitled to withdraw the entire compensation in the equal proportion. The Tribunal shall transfer the compensation amount to the Savings Bank Accounts of the claimants, through RTGS. The claimants are not entitled to any interest for the default period. The deficit court fee shall be paid by the appellants before receiving the copy of this judgment.

14. In the result, this Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, the connected CMP is closed.

Sd/-
Assistant Registrar(CS II)

Encl:Addl.Court fee filed
for a sum of Rs.4,100/-
vide USR 54707 enclosed

//True Copy//

Sub Assistant Registrar

srk

To

1. Motor Accident Claims Tribunal cum Subordinate Judge, Trichengode
2. The Section Officer, V.R.Section, High Court, Madras(2 copies)

+1cc to Mr.T.Ravichandran, Advocate SR.No.46677
+1cc to Mr.C.Kulanthaivel, Advocate sR.No.46977

BR(CO)
sm:12.7.2018

Judgment in
C.M.A.No.1787 of 2017