

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.06.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

and

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A.No.1815 of 2017
and CMP No.9729 of 2017

The New India Assurance Company Limited,
Branch Office,
D.No.19 & 20, People's Park,
Govt. Arts College Road,
Coimbatore - 641 018

...Appellant/Respondent III

versus

1. Mrs.T.Suganya ...Respondent-1/Petitioner 1
 2. Minor T.Rithanya ...Respondent-II/Petitioner II
 3. Minor T.Sowthanya ...Respondent-III/PetitionerIII
 4. Mrs.P.Santhamani ...Respondent-IV/Petitioner IV
 5. Mr.R.Narendra Kumar ...Respondent-V/Petitioner 1
 6. Mr.S.Prakash ...Respondent VI/Respondent II
- [Minor respondents 2 and 3 rep. by guardian and mother the 1st respondent]

Prayer: Civil Miscellaneous Appeal is filed, against the judgment and decree in M.C.O.P.No.752 of 2012, dated 18.01.2017, on the file of the Motor Accident Claims Tribunal, [I Additional District Judge], Tiruppur District.

For Appellant : Mr.J.Chandran.

JUDGMENT

(Judgment of the Court was made by S.MANIKUMAR ,J.)

Questioning the quantum of compensation of Rs.22,85,000/- with interest at the rate of 7.5% per annum from the date of claim till deposit, awarded to the legal representatives of the deceased, wife, two minor children aged about 6 years and 4 years, respectively and mother, in M.C.O.P.No.752 of 2012, on the file of the Motor Accident Claims Tribunal, [I Additional District Judge], Tiruppur District, M/s.New India Assurance Company Limited, Coimbatore, is on appeal, on the grounds inter alia that in the absence of any documentary evidence to prove income by supplying milk, tribunal ought not to have fixed the monthly income of the deceased as Rs.10,000/- for computing the loss of contribution to the family. Added further,

Mr.J.Chandran, learned counsel for the appellant-Insurance company submitted that when the age of the deceased has been mentioned as 40 years in Ex.P12, PAN Card, the tribunal erred in fixing the same as 39 years. Contention has also been made that before the tribunal, respondents/legal representatives themselves, filed a memo, not pressing the claim petition and that the same was dismissed. Subsequently, when the claim petition is restored the tribunal ought not to have apportioned interest at the rate of 7.5% per annum from the date of dismissal of the claim petition i.e 30.11.2013, till restoration of the same, done after 354 days. Except the above, no other ground is urged.

2. By inviting the attention of this Court to letter dated 17.04.2014 of the learned counsel for the respondents/legal representatives, submission has also been made that that when the respondents themselves offered to settle the matter for a full and final quit of Rs.20 Lakhs, the tribunal ought not to have awarded compensation of Rs.22,85,000/- with interest at the rate of 7.5% per annum.

3. We have heard the learned counsel for the insurance company-appellant herein and perused the materials available on record. Inasmuch as the arguments have been restricted only to the aspect of quantum of compensation and interest awarded during the period between 30.11.2013, the date on which the claim petition was dismissed and lateron restored, after 354 days, there is no need to delve into the aspect of negligence and liability.

4. Tribunal has quantified the compensation as Rs.22,85,000/- with interest at the rate of 7.5% per annum from the date of claim till deposit, under the following heads.

Loss of Dependency	: Rs.20,25,000/-
Loss of consortium to the wife	: Rs. 50,000/-
Loss of love and affection for claimants	: Rs. 50,000/-
Loss of care and guidance for minor	: Rs. 1,00,000/-
Medical expenses as per bill	: Rs. 25,000/-
Funeral Expenses	: Rs. 25,000/-
Transport Expenses	: Rs. 10,000/-

5. Respondents/legal representatives have adduced oral evidence to prove that the deceased was running a diary farm with 10 cows and supplied 100 litres of milk per day to Aroma Dairy Karanampet. Added further, they have also marked Ex.P13, certificate issued by Managing Partner, Sri Mahalashmi Dairy, Coimbatore and Ex.P14, ledger account of Thirumalaisamy issued by the General Manager, Shanthi Poultry Farm (Pvt) Limited, Coimbatore, for the period between 01.04.2008 and 31.03.2009

6. The above documents have been filed to prove that the deceased was engaged in supply of market and running a poultry farm. PW3, an independent witness has also adduced supporting evidence to prove the avocation and income, which the claims tribunal has taken note of. Ex.P15, statement of accounts for the period between 01.04.2008 and 18.10.2012 has been filed besides Ex.P16 - Form-16A (3Nos.) and Ex.P17 Form 2D (4 Nos.). Further, Exs.P18 & P19, copy of bank passbooks of minors have also been marked. Upon perusal of bank statement, tribunal has also noted that as on 01.07.2012, the deceased had a bank deposit of Rs.2 Lakhs.

7. On evaluation of oral and documentary evidence, by accepting the avocation, the tribunal has determined the monthly income as Rs.10,000/-. Thereafter, added 50% towards future prospects. As the number of dependents are four in number, the tribunal deducted 1/4th towards the personal and living expenses of the deceased.

8. A contention has been made that the tribunal ought not to have fixed the age of the deceased as 39 years, contrary to the entry in Ex.P12, PAN card. Application of 15 multiplier for the purpose of computing the loss of contribution to the family, cannot be said to be erroneous. Thus, applying 15 multiplier, the tribunal computed the loss of contribution to the family as Rs.20,25,000/-.

9. Though, Mr.J.Chandran, learned counsel for the insurance company, appellant herein contended that when the learned counsel for the respondents/ legal representatives addressed a letter dated 17.11.2014 to the Regional Manager, Coimbatore branch to settle the case for a sum of Rs.20 Lakhs as full quit, tribunal ought not to have awarded compensation, admittedly, the said letter has not been placed before the tribunal. Had the letter been placed, the tribunal would not have proceeded further. As regards fastening interest for the period between 30.11.2013, the date on which the claim petition was stated to have been dismissed and till restoration, after delay of 354 days, Mr.J.Chandran, learned counsel for the insurance company fairly admitted that before the tribunal, restoration was not objected and that thereafter, the claims tribunal decided to adjudicate the disputes on merits and passed the judgment and decree dated 18.01.2017, awarding compensation.

10. As rightly contended claims tribunal ought not to have awarded interest on the quantum of compensation for the interregnum period. Interest for one year on the quantum of compensation of Rs.22,85,000/- works out to Rs.1,71,375/-. Question now to be considered is whether the above amount should be deducted from the quantum of compensation. Break up figures of the compensation awarded [extracted supra] shows that when the 1st respondent wife was just aged about 26 years, sum of Rs.50,000/- alone has been awarded as loss of consortium is less. Following the decision of the Hon'ble Supreme Court in Rajesh and others Vs. Rajbir Singh, reported in 2013 ACJ 1403, the tribunal ought to have awarded compensation of Rs.1,00,000/- under the said head. Similarly, award of Rs.50,000/- to the mother and two minors of the deceased aged about 6 years and 4 years respectively for loss of love and affection, is a pittance. The tribunal ought to have awarded compensation of Rs.1,00,000/- each, under the head loss of love and affection, in which event, there would be compensation of Rs.2,50,000/- under the head loss of loss of love and affection, to the children Rs.1,00,000/- each and Rs.50,000/- to the mother. Reference can also be made to the decisions in Jiju Kuruville v. Kunjamma Mohan reported in 2013 (4) CTC 252 and Surti Gupta v. United India Insurance Co. Ltd., reported in 2015 (1) TNMAC 472 (SC), wherein the Hon'ble Apex Court has awarded Rs.1,00,000/- to the legal representatives of the deceased, for the loss of love and affection.

11. Rs.1,00,000/- awarded under the head loss of care and guidance is nothing but compensation under the head loss of estate. Excess if any can be adjusted against the inadequate compensation under the head loss of love and affection. Having regard to the fact that the tribunal has awarded less compensation under the heads loss of consortium to the widow and loss of love and affection to the minor children and mother respectively, excess amount of Rs.1,71,000/- representing interest during the above said interregnum period, can be adjusted against the inadequate compensation awarded under the said heads.

12. In the result, the quantum of compensation of Rs.22,85,000/- awarded with interest at the rate of 7.5% per annum from the date of claim till deposit, cannot be said to be excessive warranting interference. There is no merit in the Civil Miscellaneous Appeal and the same is dismissed. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

13. Consequent to the dismissal of the appeal, the appellant-Insurance company is directed to deposit the entire

award amount with proportionate interest at the rate of 7.5% per annum from the date of claim till deposit and costs, less the statutory deposit, to the credit of M.C.O.P.No.752 of 2012, on the file of the Motor Accident Claims Tribunal, [I Additional District Judge], Tiruppur District, within a period of four weeks from the date of receipt of a copy of this order.

14. On such deposit, except the minors/respondents 2 and 3 other respondents/claimants are permitted to withdraw their shares, as apportioned by the tribunal, with proportionate accrued interest and costs, by making necessary applications.

15. Share of the minors/respondents 2 and 3 shall be deposited in any one of the Nationalised Banks in fixed deposit under the reinvestment scheme initially for a period of three years. Interest accruing on the share of the minors / respondents 2 and 3, shall be paid to the mother of the minors, 1st respondent herein viz., Mrs.T.Suganya, once in three months, till they attain majority.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal,
[I Additional District Judge], Tiruppur District.

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

+1 cc to Mr.S.P.Yuaraj Advocate sr 45851

+1 cc to Mr.J.Chandran Advocate sr 45516

C.M.A.No.1815 of 2017

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