rIN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2017

CORAM

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

C.M.A.No.466 of 2015

1. Shanthi,
2. Minor Malaviga
3. Minor Arun Kumar
   Minors 2 and 3 rep by their mother
   Mrs.Shanthi

Alamelu
Since Deceased

4.Tmt. Latha
5.Tmt.Ranjana
6.Tmt.Rama
   Appellants 4 to 6 are the legal heirs of
   the 4th Claimant Mrs. Alamelu

Cause title accepted vide order of
Court dated 27.01.2015 made in
M.P.No.1 of 2014 in C.M.A.SR No.
104238 of 2011 ... Appellants/Claimants

Vs

1. Marutha Kumar

2. Bajaj Allianz General Insurance Co.Ltd.,
   Old No.38-A, New No.61, 1st Avenue,
   V.G.P.Parijatham Apartments,
   Ashok Nagar, Chennai - 600 083. ... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal as against the judgment and decree dated 17.08.2011, made in M.A.C.T.O.P.No.121 of 2009 on the file of Court of the Principal District Judge/Motor Vehicle Accidents Claims Tribunal, Villupuram.

For Appellants : Mr.V.S.Siva Sundaram
For Respondent : Mr.S.Arun Kumar for R2

JUDGMENT

This Civil Miscellaneous Appeal has been preferred by the claimants as against the award of this Rs.7,84,200/- for the death of one Ganesan, aged 35 years, working as a Gang Mazdoor in Highways Department, in the accident occurred on 06.12.2008 when the deceased was riding his motorcycle which was hit down by Toyato Car bearing Registration No.TN 02 K 1788, insured with second respondent insurance company, which was driven in a rash and negligent manner.

2. Heard, Mr.V.S.Siva Sundaram, learned counsel for the appellants and Mr.S.Arun Kumar, learned counsel for the second respondent.

3. The first respondent/owner remained exparte before the Tribunal and therefore, notice to the first respondent is dispensed with.

4. There is no dispute with regard to the contributory negligence fixed by the Tribunal at 20% on the deceased and 80% on the driver of the car and the same is confirmed. Now, the only issue is with regard to the quantum of compensation awarded to the claimants.

5. The employment as well as the income of deceased have been proved by Ex.P.13 Pay certificate issued in respect of the deceased. Though, Rs.8,414/- was stated to be the gross salary, the Tribunal took into consideration, the net salary of Rs.7,709/-. Therefore, rounding off the monthly income to Rs.7700/-, the annual income of the deceased would be

= Rs.7700/- x 12

= Rs.92,400/-

However, "Future Prospects" of the deceased was not taken into consideration. As per Ex.P.4, Postmortem Certificate, the age of the deceased was 36 years and as per the Judgment of the Honourable Apex Court rendered in Smt.Sarala Varma and Others vs. Delhi Transport Corporation and another reported in 2009 ACJ 1298, 50% of his income is required to be added towards "Future Prospects". Therefore, adding 50% towards "Future Prospects"

Total Monthly Income = Rs.7,700/- + 50%(Rs.7,700/-)
= Rs. 11,550/-

Total Yearly Income = Rs.11,550 x 12 = Rs.1,38,600/-

Income tax Deduction at 10% = Rs.1,38,600/-(-) 10% (Rs.1,38,600/-)

= Rs.1,24,740/-

6. The size of the family of the deceased is four and

therefore, one-fourth is required to be deducted towards "Personal Expenses" whereas the Tribunal deducted one-third towards "Personal Expenses" of the deceased instead of one-fourth, which is erroneous. Therefore, deducting 1/4th from the Total Annual income of the deceased towards his "Personal Expenses", the "Annual Contribution of the deceased to his family " would be,

Annual Contribution of the
deceased to his family = Rs.1,24,740/- (-)1/4 (Rs.1,24,740/-)
= Rs. 93,555/-

As per the age of the deceased, the appropriate multiplier to be adopted as per the judgement in Sarala Verma's case is 15. Therefore, "Loss of Income" is calculated as here under:

Loss of Income = Rs.93,555/- x 15
= Rs.14,03,325/-

The Tribunal awarded Rs.20,000/- towards "Loss of consortium" which is very meagre and the same is enhanced to Rs.1,00,000/- as per the Judgement of the Honourable Apex Court in Rajesh and others vs. Rajbir Singh reported in 2013 (2) TNMAC 55 (SC). similarly Rs.20,000/- towards "Loss of Love and Affection" to the respondents 2 to 4 is enhanced to Rs.1,00,000/-, Rs.5,000/- towards "Funeral Expenses" is enhanced to Rs.10,000/- and the award of Rs.7,84,200/- is enhanced to Rs.16,13,325/-. The rate of interest awarded by the Tribunal at 6% per annum is enhanced to 7.5% per annum.

7. Since the Tribunal had fixed contributory negligence to the extent of 20% on the deceased, deducting 20% from the enhanced amount of Rs.16,13,325/-, the compensation payable to the claimants would be
= Rs.16,13,325/- (-) 20% (Rs.16,13,325/-)
= Rs.12,90,660/- rounded off to Rs.13,00,000/- .
The rate of interest awarded by the Tribunal @ 7.5% per annum remains unaltered.

8. It is stated that the fourth appellant/the mother of the deceased died and her legal heirs have been brought on record. However, it is made clear that the amount payable to the deceased fourth appellant will have to be given in favour of 2nd and 3rd appellants. The first appellant would be entitled to get Rs.7,00,000/- and the second and third appellants would be entitled to get Rs.3,00,000/- each.

9. The appellants shall pay additional court-fee for the enhanced award amount within a period of two weeks from the date of receipt of a copy of this order.

10. The 2nd respondent Insurance Company is directed to deposit the entire amount, as per the modified award passed by this court, after deducting the amount already deposited, if any, along with interest and costs, before the Tribunal, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the share of first appellant, through RTGS mode, to her bank account, after getting the required details, within a period of one week thereafter. As far as the respective shares of appellants 2 and 3 are concerned, the same shall be deposited in interest bearing Fixed Deposit, in any one of the Nationalised Banks, till they attain majority. The first appellant is permitted to withdraw interest accruing on such deposit, once in three months.

11. In the result, the Civil Miscellaneous Appeal is partly allowed enhancing the award passed by the Tribunal from Rs.7,84,200/- to Rs.12,90,660/- rounded off to Rs.13,00,000/-. No costs.

s/d-
Assistant Registrar(CS-VI)

True Copy

Sub-Assistant Registrar

vv/nv

To

1. Principal District Judge/
Motor Vehicle Accidents Claims Tribunal,
Villupuram

+1 CC to Mr.V.S. Sivasundaram, Advocate sr 25233
+1 CC to Mr.S. Arunkumar, Advocate sr 25518

C.M.A.No.466/2015

GP(CO)
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