IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.01.2017

CORAM:

THE HON'BLE Dr. JUSTICE S.VIMALA

C.M.A.No.1677 of 2014

& C.M.P.No.20777 of 2016

1. A.Geetha
2. A.Gokulkrishnan (Minor)
   Rep. By M&N.F.A. Geetha,
3. R.Saratha ... Appellants / claimants

..vs..

1. D.Baskaran
2. United India Insurance Co. Ltd.,
   'Siling Building', No.134 Greams Road,
   Chennai 600 006 ... Respondents

Appeal filed under Section 173 of Motor Vehicles Act 1988, against the Judgment and Decree, dated 01.10.2013 made in M.C.O.P.No.4191 of 2009 on the file of the Motor Accident Claims Tribunal, First Special Sub Court, Small Causes court, Chennai.

For Appellant : Mr. K.A.Ravindran, for,
Mr. A.Shanmugaraj

For Respondents : Mrs. R.Vijaya Kamala, for R-2,
Exparte, R-1

JUDGMENT

This is a case, where the wife aged 24, the minor child aged 1 and the mother aged 58, are claiming compensation, in respect of the death of the deceased, Arul, aged 26 years, who was a driver by profession and earning a sum of Rs.6,500/- per month.

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1.1. The Tribunal quantified the compensation at Rs.9,74,000/- with the following break up details:-

Pecuniary loss	-	Rs.8,64,000/-
Loss of consortium	-	Rs. 50,000/-
Loss of love and affection	-	Rs. 50,000/-
Funeral Expenses	-	Rs. 10,000/-
		Rs.9,74,000/-

2. The learned counsel for the appellants / claimants would point out that an application has been taken up by the appellants to enhance the claim for a sum of Rs.20,36,200/-, as the Tribunal did not take into account the future prospective increase in income, which must be 50% increase in income; in other words, the learned counsel would submit that the monthly income of the deceased, as per the Salary Certificate, Ex.P-9, the net salary of the deceased was Rs.5,880/- and the Tribunal ought to have added 50% of the income (Rs.2,940/-) towards future prospective increase in income and ought to have deducted 1/3rd towards personal expenses (Rs.5,880/- + Rs.2,940/- (-) Rs.2,940/-), which comes to Rs.5,880/-, instead the Tribunal has taken the monthly income at Rs.4,000/- per month, which is incorrect.

3. The learned counsel for the second respondent / Insurance Company would point out that the evidence on the side of the claimants / appellants did not establish that the deceased was earning a sum of Rs.6,500/-; the Secretary of the office, in which the deceased had been employed, has been examined to prove the salary of the deceased, but the Tribunal has expected that the ESI Contribution records and other contemporaneous records ought to have been filed to prove the income of the deceased.

4. Even assuming, without admitting, that no independent witness has been examined to prove the income of the deceased, it is impossible to maintain a family consisting of wife, mother and a child without a monthly income of Rs.6,500/-. Even according to the Minimum Wages payable to a person, it is roughly Rs.300/- per day, therefore, it is right that Rs.6,500/- can be taken as the monthly income of the deceased. Therefore, the salary should have been fixed to the deceased at Rs.6,500/- per month, as per Ex.P-9 salary certificate. Adopting the multiplier of '17' (since the age of the deceased was 26) the loss of dependency would be Rs.11,99,520/- (Rs.5,880/- x 12 x 17).

5. It is pointed out that the loss of consortium should have been more, since the wife has lost the husband at the very young

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age of 21. Therefore, the loss of consortium is awarded at Rs.1,00,000/-.

6. Needless to point out that the child aged 1 would have missed the lap of the father and will not even remember the face of the father and the loss of guidance by the father is immeasurable. However, going by the standards adopted by the Courts, the loss of love and affection is fixed / awarded at Rs.1,00,000/-.

7. The funeral expenses awarded by the Claims Tribunal is too meager, hence, the same is enhanced from Rs.10,000/- to Rs.25,000/-. Thus, the total compensation payable would be Rs.14,24,520/- (Rs.11,99,520/- + 1,00,000/- + Rs.1,00,000/- + 25,000/-).

8. In the result, the award is enhanced from Rs.9,74,000/- to Rs.14,24,520/- and this 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.

8.1. Out of the total compensation awarded, the first appellant / first claimant / wife is entitled for a sum of Rs.4,00,000/- along with proportionate interest and the third appellant / third claimant / mother is entitled for a sum of Rs.2,24,520/- along with propionate interest and the minor claimant / second claimant / son is entitled for a sum of Rs.8,00,000/- along with the proportionate interest. The major claimants (appellants 1 and 3) are permitted to withdraw their share of compensation. The share of the minor claimant (second appellant) shall be deposited in a Fixed Deposit Reinvestment Scheme, till the minor attains majority and the interest accrued thereon, shall be withdrawn by the first appellant / first claimant / mother, once in three months, under direct intimation to the Tribunal, and shall be utilized for the welfare of the minor.

9. This Civil Miscellaneous Appeal is allowed. No costs. Consequently, the connected CMP is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. Motor Accident Claims Tribunal,
   First Special Sub Court,
   Small Causes court,
   Chennai

2. The Section Officer,
   V.R.Section,
   Madras High Court,
   Chennai 104

+1cc to Mr.Shanmugaraj, Advocate, S.R.No.2973
+1cc to Mr.Vijayalamala, Advocate, S.R.No.2795

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