IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.03.2017

CORAM:

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

C.M.A.NO.917 OF 2015
AND
M.P.NO.1 OF 2015

United India Insurance Co. Ltd.,
K.B.S. Motors Buildings,
36, Katpadi Road,
Gandhi Nagar,
Vellore - 632 002. ... Appellant/III Respondent

Versus

1.Mani

2.Manju

3.Vinodha

4.Vanitha

5.Prakash ... 1 to 5 Respondents/ 1 to 5 Petitioners

6.Mahesh ... 6th Respondent/1st Respondent

7.Ramakrishnan ... 7th Respondent/IInd Respondent

PRAYER: Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 18.04.2012 made in MCOP No.146 of 2011 on the file of Motor Accidents Claims Tribunal (Sub Court) Hosur.

For Appellant : Mr.T.Ravichandran

For Respondents 1 to 5 : Mr.R.Jayakumar

J U D G M E N T

(JUDGMENT OF THE COURT WAS MADE BY M.GOVINDARAJ, J.)

Challenging the award dated 18.04.2012, passed in MCOP No.146 of 2011, by the Motor Accidents Claims Tribunal (Sub Court) Hosur, the insurance company has come up with the present appeal, against the quantum of compensation awarded.

2. The claimants / respondents 1 to 5, legal representatives of the deceased, have filed claim petition before the Tribunal stating that the deceased was working as a Civil Contractor and have filed Exs.P6 to P10 in proof of his income. The liability is accepted. The appeal arises on a short ground with regard to quantum of compensation. As per the income tax returns, the deceased earned Rs.78,101/-, Rs.96,689/- and Rs.1,13,495/- in the year 2004-2005, 2005-2006 and 2006-2007 respectively. The accident had taken place on 17.05.2011. Therefore, the income tax returns, which is filed prior to the date of accident can be relied on. The latest income tax returns available before the Tribunal for the year 2005-2006 reveals a sum of Rs.1,13,495/- as the annual income of the deceased. But the Tribunal, on a reasonable calculation, has fixed the annual income, for the year 2011, at Rs.2,25,000/- approximately. The fixation of annual income is challenged by the insurance company in this appeal.

3. When there is a public document, which clearly proves the annual income of the deceased, it could not be escalated, without any evidence therefor. The Tribunal has fixed the annual income at Rs.2,25,000/-, without any legal evidence. Therefore, the annual income fixed by the Tribunal needs to be interfered with. The income shall be fixed as per the income tax returns for the year 2006-2007 and accordingly, the annual income is taken as Rs.1,13,495/-, and the calculation is made accordingly.

4. In so far as the award of compensation under the other heads are concerned, the Tribunal has awarded Rs.10,000/- towards loss of consortium to the wife and the same is enhance to Rs.75,000/-. Likewise, for loss of love and affection to the children of the deceased, the Tribunal has awarded a sum of Rs.5,000/- each, which is enhanced to Rs.2,00,000/- at the rate of Rs.50,000/- each. Funeral expenses is enhanced to Rs.25,000/-; Rs.5,000/- is awarded under the head transportation; and Rs.1,000/- is awarded under the head conventional damages. Thus, on reworking, the award amount reduced by Rs.5,29,799/- and the award amount is modified from Rs.23,85,000/- to Rs.18,55,201/-, with proportionate interest.

5. Mr.T.Ravichandran, learned counsel for the insurance company submitted that the entire award amount of Rs.23,85,000/-, with interest and costs, less the statutory deposit, has already been deposited, to the credit of MCOP No.146 of 2011, on the file of Motor Accidents Claims Tribunal (Sub Court) Hosur.

6. Consequent to the reduction in the quantum of compensation, M/s.United India Insurance Company Limited is permitted to seek for refund of the balance amount, from the deposit, with proportionate interest, on making proper application before the Tribunal.

7. In fine, the Civil Miscellaneous Appeal is allowed as indicated above. No costs. Consequently, connected miscellaneous petition is closed.

TK 14.03.2017

BEING MENTIONED

This Petition having been posted on Thursday, the Twenty Seventh day of July Two Thousand and Seventeen "For being mentioned" in pursuance of the order of this Court dated 14.03.2017 made in C.M.A.NO.917 of 2015 in the presence of the aforesaid advocates, this Court made the following Order:-

On appeal by the appellant-Insurance Company, after arriving at an annual income of Rs.1,13,495/- and taking note of the compensation awarded under other heads, we determined the total compensation as Rs.18,55,201/-. The Tribunal has awarded Rs.23,85,000/- and therefore, we deducted Rs.5,29,799/-.

2. Taking note of the submission of the learned counsel appearing for the appellant-Insurance Company that the entire award amount with interest, has already been deposited, we permit the appellant-Insurance Company to seek for the balance amount deposited.

3. Calculation mistake in the quantum of compensation is brought to the notice of this Court. We have perused the judgment. Paragraph Nos.3 and 4 of the judgment made in C.M.A.No.917 of 2015, dated 14.03.2017, require suitable modification.

4. At the time of accident, the deceased is stated to be a Senior Contractor and aged 50 years. Annual income has been taken as Rs.1,13,495/-. Number of dependants being five, deduction should be 1/4th. Though on 14.03.2017, when we decided the appeal, attention of this Court was not invited to the decision of Rajesh v. Rajbir Singh reported in 2013 (2) TNMAC 55, wherein, the Hon'ble Apex Court added 15% of the income of the deceased, above 50 years, towards future propsects, while computing the contribution to the family. Following the decision, we now compute the the annual contribution as follows:

Annual Income	- Rs.1,13,495/-
15% addition	- Rs. 17,025/-
Annual contribution	- Rs.1,30,520/-

5. The deceased is survived by five dependants. As per Sarla Verma v. Delhi Transport Corporation reported in 2009 (2) TNMAC 1 (SC), the deduction should be 1/4th towards personal and living expenses, which works out to Rs.97,890/-. Multiplier is 13. By applying the abovesaid multiplier to the multiplicand, the loss of contribution to the family works out to Rs.12,72,570/-.

6. On 14.03.2017, when we disposed of the appeal, we awarded Rs.75,000/- towards loss of consortium. Considering the age of the wife of the deceased, now we deem it fit to award Rs.1,00,000/- as loss of consortium. Award under other heads remain unchanged. Thus, on re-working, compensation due and payable to the respondents/claimants is Rs.16,03,570/- with interest at the rate of 7.5% per annum and costs, as hereunder:

Loss of Earning Capacity	: Rs.12,72,570/-
Loss of Consortium	: Rs. 1,00,000/-
Loss of Love and Affection	: Rs. 2,00,000/-
Funeral Expenses	: Rs. 25,000/-
Transportation	: Rs. 5,000/-
Damages to clothes	: Rs. 1,000/-
Total	: Rs.16,03,570/-

7. Compensation awarded by the Tribunal is Rs.23,85,000/-. Compensation now determined by this Court is Rs.16,03,570/- and therefore, the amount reduced is Rs.7,81,430/-. Out of the total compensation, a sum of Rs.6,03,570/- is apportioned to the 1st respondent/claimant and the other remaining amount is equally apportioned to the sons/daughters of the deceased.

8. Except Paragraphs 3 and 4 of the judgment, dated 14.03.2017, rest of the judgment is undisturbed. Registry is directed to carry out the same and issue fresh copy.

27.07.2017

skm

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1.The Subordinate Judge,
Motor Accident Claims Tribunal
Hosur.

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

+1 cc to Mr.S.Lakshmanasamy Advocate sr 16319
+1 cc to Mr.T.Ravichandran Advocate sr 15985

C.M.A.NO.917 OF 2015

vgII(co)
aa21/06/2017

CA(30.08.2017)