IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.08.2017

CORAM:

THE HON'BLE DR. JUSTICE S.VIMALA

Civil Miscellaneous Appeal No.1969 of 2017

1. Palaniammal
2. Sengottaiyan
3. Susila
4. Sathish Kumar ... Appellants / Petitioners

..Vs..

1. K.Thangarasu
   (R-1 set exparte before the Tribunal, hence, notice for R-1 may be dispensed with for the time being)
2. National Insurance Co. Ltd.,
   Divisional Office-7, 50 Janpath,
   New Delhi 110 001 ... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree, dated 22.12.2016, passed in M.C.O.P.No.865 of 2010 on the file of the Motor Accident Claims Tribunal cum Subordinate Court, Sankari.

For Appellants : Mr. C.Kulanthaivel
For Respondents : Mrs. R.Sreevidhya, for R-2,
R-1 exparte.

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J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the claimants, challenging the quantum of compensation as inadequate and disproportionate to the income of the deceased. The deceased, Mariappan (S/o.Sengottaiyan), aged 21, a power-loom owner and weaver, earning a sum of Rs.20,000/- per month died in an accident on 13.09.2010.

2. The claimants filed the claim petition for compensation claiming a sum of Rs.20,00,000/-. The first claimant is the mother, the second claimant is the father, the third claimant is the sister and the fourth claimant is the brother.

3. It is the contention of the learned counsel appearing for the appellants / claimants that the claimants' family is a joint family, which was totally depending upon the income of the

deceased and therefore, all of them must be considered as dependents and compensation should be enhanced.

4. This contention requires a perusal of the details of the award passed by the Claims Tribunal. The loss of dependency has been quantified at Rs.13,36,500/-, the loss of love and affection at Rs.1,25,000/-, funeral expenses at Rs.25,000/-, transport expenses at Rs.10,000/- and thus, the total has been quantified at Rs.14,96,500/-.

5. The Tribunal has taken the monthly income of the deceased at Rs.4,500/- and enhancing the same by 50% towards future prospective increase in income, deducting 1/4th towards the personal expenses and adopting the multiplier of 18, the loss of income has been quantified. The Tribunal has considered the case reported in 2014 (1) TNMAC 459 (Syed Sadiq etc., v. Divisional Manager, United India Insurance Co. Ltd.,) and has fixed the loss of dependency, considering the totality of the circumstances. Therefore, the monthly income fixed and the loss of dependency arrived at cannot be faulted with.

6. It is stated that the loss of love and affection for each of the parent should have been awarded, at least, at Rs.1,00,000/- and the amount awarded for both the sister and brother of the deceased at Rs.1,25,000/- is extremely low.

7. So far as the brother and sister are concerned, they cannot claim compensation for loss of dependency, in the absence of the proof showing that they were depending upon the income of the deceased and that they were not depending upon the income of the parents. They are entitled to only loss of love and affection.

8. Out of Rs.1,25,000/- towards loss of love and affection, the first claimant has been awarded a sum of Rs.50,000/- and the claimants 2 to 4 have been awarded a sum of Rs.25,000/- each. The Claimants 1 and 2, being the parents, are equally entitled to the compensation under the head of loss of love and affection. Hence, for each of the parents, together the compensation under the head loss of love and affection is enhanced by Rs.50,000/- and in that event, the compensation on account of loss of love and affection to the parents would be Rs.1,25,000/-. For the brothers and sisters, the compensation awarded is sufficient.

9. The award passed by the Claims Tribunal under other heads, namely, pecuniary loss, funeral expenses and transport expenses at Rs.13,36,500/-, Rs.25,000/- and Rs.10,000/-, respectively, are reasonable and hence, the same are confirmed as such.

10. In the result, this Civil Miscellaneous Appeal is allowed, by enhancing the total amount of compensation from Rs.14,96,500/- to Rs.15,46,500/-, which is payable with interest at 7.5% per annum from the date of petition till the date of

deposit.

11. The second respondent / Insurance Company is directed to deposit the total compensation, as awarded by this Court, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the mother / first claimant / first appellant herein is entitled to a sum of Rs.7,09,000/-, the father / second claimant / second appellant is entitled to a sum of Rs.6,12,500/-, the sister and brother / third and fourth claimants / third and fourth appellants are each entitled to a sum of Rs.1,12,500/-, with the proportionate interests. At the time of filing of the claim petition, i.e., in the year 2010, the fourth claimant / brother / fourth appellant herein was a minor, aged 17, and he would have attained majority by now and hence, he is declared as major. Hence, on such deposit being made, the Tribunal shall transfer the respective compensation amounts to the Savings Bank Accounts of the claimants / appellants, through RTGS. It is made clear that the claimants are not entitled for any interest for the default period. The excess court fee, for the enhanced compensation amount, shall be paid by the claimants before receiving the copy of this judgment. No costs.

Sd/-
Assistant Registrar(CS-)

//True Copy//

Sub Assistant Registrar

srk

To
1. Motor Accident Claims Tribunal
cum Subordinate Court, Sankari.

2. The Section Officer,
V.R.Section, High Court, Madras(2 COPIES)

+1cc to Mr.R.SREE VIDHYA, Advocate, S.R.No. 60686
+1cc to Mr.C.KULANTHIVEL, Advocate, S.R.No. 60465

C.M.A.No.1969 of 2017

SJ(CO)
TR(26/02/2018)