IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.08.2017

CORAM

THE HONOURABLE Dr.JUSTICE S.VIMALA

C.M.A.No.2197 of 2017

1. Saroja
2. S.Govindaraj
3. T.Susima
4. S.Sasikala .. Appellants/Petitioners

/Vs/

1. G.Venkatachalam
2. The National Insurance Co.Ltd., rep.by its Branch Manager, Second Floor, Maruti Complex, F-215, No.27, Omalur Main Road, Salem - 636 004. .. Respondents/Respondents

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 21.07.2010 made in M.C.O.P.No.222 of 2008 on the file of the Additional District Judge (FTC) cum Motor Accident Claims Tribunal, Dharmapuri.

For Appellants : Mr.M.Selvam

For Respondent No.2 : Mr.J.Chandran

JUDGMENT

The claimants, wife aged 35 years, son aged 20 years, two daughters aged 19 and 17 respectively, who are the legal representatives of the deceased Sivalingam, have filed the claim petition in respect of death of Sivalingam claiming a sum of Rs.10,00,000/- as compensation.

2. The deceased Sivalingam, aged 40 years, earning a sum of Rs.15,000/- per month, by doing Cultivation, Vegetable Business, Mason, Milk Business, died in an accident that took place on 16.12.2006.

3. Claiming that there is a loss of dependency and loss of love and affection, the claimants have filed the claim petition. The Tribunal, on a consideration of materials placed before it, has passed an award for a sum of Rs.4,30,400/- under the following break-up details;

Loss of earning capacity	:	Rs. 3,98,400.00
Loss of consortium	:	Rs. 10,000.00
Loss of love and affection	:	Rs. 15,000.00
Transportation expenses	:	Rs. 2,000.00
Cremation expenses	:	Rs. 5,000.00
Total compensation	:	Rs. 4,30,400.00

4. The learned counsel for the appellants/claimants would submit that the award under non-conventional heads are grossly inadequate and thus, it is against the settled principles of law. It is pointed out that loss of consortium must have been more, when the first claimant is aged only 35 years and loss of love and affection should be more, when appellant No.4 was a minor (at the time of filing of the petition).

5. The learned counsel for the second respondent/Insurance company would point out that the age of the first claimant as spoken by the claimants cannot be true, pointing out that the first claimant should have delivered the first baby at the age 14, which is unbelievable.

6. It is also pointed out that the age of the deceased is more and it has been shown to be lesser only for the purpose of adopting higher multiplier and therefore, the reasonable multiplier of 14 should be adopted.

7. Considering the age of the claimants as well as the age of the deceased and accepting the contention of the learned counsel for the second respondent/Insurance company, multiplier 14 is adopted and the age of the deceased must be between 41 to 45, having regard to the age of the second claimant (aged 20 during the 2008) and other claimants.

7.1.Income has been fixed at Rs.3,600/- which is unreasonable Considering the number of dependents, income is fixed at Rs.4,500/- and after deducting 1/3rd towards personal expenses and adopting multiplier 14, the loss of dependency is assessed at Rs. 5,67,000/- ; Rs.50,000/- is awarded towards loss of consortium and Rs.50,000/-each is awarded towards loss of love and affection to the appellants 2 to 4; Rs.10,000/- is awarded towards cremation expenses and Rs.5,000/- is awarded towards transport expenses. The total amount of compensation has been quantified at Rs.7,82,000/-.

8. There is an over all increase in the compensation by Rs.3,51,600/-. The total amount of compensation is awarded at Rs.7,82,000/-.

9. In the result, the Civil Miscellaneous Appeal is allowed to the extent indicated. No costs. Consequently, connected miscellaneous petition is closed, if any.

10. The second respondent /Insurance Company is directed to deposit the enhanced award amount of Rs.7,82,000/- (from 4,30,400/- to 7,82,000) along with interest at 7.5 % from the date of petition, till the date of deposit, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the amount directly to the bank account of the claimants as per ratio fixed by the tribunal through RTGS within a period of two weeks thereafter. It is also made clear that the claimants shall not be entitled to interest for the delay period.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

sms/kv

To

1. The Additional District Judge (FTC)
   cum Motor Accident Claims Tribunal,
   Dharmapuri.

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

+1cc to Mr.M.Selvam, Advocate SR.No.54806

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RSI(CO)
GN(06/12/2017)