

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 03.08.2017
CORAM:
THE HON'BLE DR.JUSTICE.S.VIMALA
Civil Miscellaneous Appeal No.2235 of 2017

1. C.Jothi
 2. Chandrakala
 3. C.Kotteswari
 4. C.Venkatesh Babu
- ... Appellants/Petitioners

Vs

1. E.Shameel Ahmed
 2. The Divisional Manager,
New India Assurance Co. Ltd.,
Vellore District
- ... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set-aside the decree and Judgment, dated 20.02.2014 made in M.C.O.P.No.186 of 2011 on the file of Motor Accident Claims Tribunal, Principal District Judge's Court, Vellore District.

For Appellants :Mr. A.Shanmugaraj
For Respondent-2:Mr.G.Udhaya Sankar

J U D G M E N T

The wife (C.Jothi aged 54), daughters (Chandrakala aged 35 and C.Kotteswari aged 33) and the son (C.Venkatesh Babu aged 30) of the deceased, Chakkravarthi, have filed the claim petition in MCOP No.186 of 2011, for compensation, in respect of the death of Chakkravarthi, aged 63, in an accident that took place on 13.07.2010.

2. It is the case of the claimants that the deceased was a retired Head Master, at the time of accident, but he continued to function as a partner in a firm, by name, Vison and in respect of which, a memorandum of understanding is relied upon.

3.The monthly income of the deceased was stated to be Rs.1,22,133/-. The deceased had been alive for a period of three days, where he had been given Intensive Medical Treatment and thereafter, he died on 16.07.2010. Claiming loss to estate as well as loss of dependency, the Legal Representatives have filed the claim petition.

4. The Tribunal, on a consideration of the materials, has chosen to award a sum of Rs.1,89,696/-, along with interest at 7.5% per annum from the date of petition till the date of realization.

5. A perusal of the award passed by the Tribunal would go to show that medical expenses of the deceased have been awarded at Rs.1,51,696/-, which is supported by bills. The loss of consortium to the wife has been awarded at Rs.10,000/-, loss of love and affection to the three persons has been awarded at Rs.20,000/-, transport expenses has been awarded at Rs.3,000/-, funeral expenses has been awarded at Rs.5,000/-, and thus, the total amount has been quantified.

6. So far as the loss of income is concerned, the finding is that the wife is receiving the family pension and therefore, there is no loss of income to the family. This finding is under challenge by the claimants.

6.1. The challenge raised by the claimants is found to be correct. In the decision reported in the case of S.Vijaya vs K.Karthikeyan decided on 13 September, 2012, this Court relying upon the decision of the Hon'ble Supreme Court reported in 1999 ACJ 344 (Parvati and others vs. Hollur Hallappa and others) and the still later decision of the Supreme Court held that neither pension, nor family pension, nor the difference in amount between the pension and family pension could be deducted from the monthly salary of the deceased in order to arrive at loss of dependency.

7. The learned counsel appearing for the appellants would submit that it is not the case of the claimants that the only source of income was the family pension, but even in the claim petition, it is stated that the deceased was a partner in a concern and that he was earning more than a sum of Rs.1,00,000/-, per month and therefore, the monthly income should have been fixed at the modest estimate and that has not been done by the Tribunal.

8. This Court is of the opinion that as there is no actual document produced by the claimants to show the income of the deceased, it is appropriate to take the monthly income at Rs.6,000/- per month, having regard to the fact that the claimant was aged 63. Deducting 1/3rd towards the personal expenses and adopting multiplier of 7, the total loss of earning to the family would be Rs.3,36,000/- (Rs.4,000/- x 12 x 7).

9. The medical expenses are supported by bills, which would go to the loss to estate, is awarded at Rs.1,51,696/-, rounded off to Rs.1,51,700/-. The loss of consortium to the wife is awarded at Rs.50,000/-. The loss of love and affection to the daughters and son (P-2 to P-4) is awarded at Rs.75,000/-, together for all the three of them. Transport expenses is awarded at Rs.5,000/-. Funeral expenses is awarded at Rs.25,000/-. Cost of attendant is awarded at Rs.5,000/-. The re-structured breakup details of the amount of compensation awarded read thus:-

Loss of earnings	-	Rs.3,36,000.00
Medical expenses	-	Rs.1,51,700.00
Loss of consortium to P-1	-	Rs. 50,000.00
Loss of love and affection to P-2 to P-4	Rs.	75,000.00
Transport expenses	-	Rs. 5,000.00
Funeral expenses	-	Rs. 25,000.00
Cost of attendant	-	Rs. 5,000.00

		Rs.6,47,700.00

9. In the result, the Civil Miscellaneous Appeal is partly-allowed, by enhancing the quantum of compensation from Rs.1,89,696/- to Rs.6,47,700/-, which is payable with interest at the rate of 7.5% per annum, from the date of petition till the date of deposit. No costs.

10. It is represented that the amount of compensation, as determined by the Claims Tribunal, has already been deposited by the second respondent / Insurance Company. Therefore, the compensation amount, as determined by this Court, shall be deposited by the Insurance Company, less the amount already deposited, if any, along with interest at 7.5% per annum, from the date of petition, till the date of deposit, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the claimants are entitled to withdraw the amount, as apportioned by the Claims Tribunal. The claimants shall pay the necessary court fee before receiving the copy of this judgment.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

srk

To

1. Motor Accident Claims Tribunal, Principal District Judge's Court,

Vellore District.

2.The Divisional Manager

New India Assurance Company Ltd.,

Vellore District.

3. The Section Officer, V.R.Section, Madras High Court, Chennai - 104(2 copies)

+lcc to Mr.G.Udayasankar, Advocate SR.No.55462

+lcc to Mr.A.Shanmugaraj, Advocate SR.No.55857

C.M.A.No.2235 of 2017

NMI

sm:17.1.2018