IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01.09.2017

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THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.M.A.NO.2524 OF 2017
AND
C.M.P.NO.13771 OF 2017

National Insurance Company Limited,
D.O.III, 751, Anna Salai,
Chennai-600 002. ....Appellant/2nd Respondent

..vs..

1.Machangandhi
2.Vijay (Minor)
3.Nandhini (Minor)
4.Sudakar (Minor) ... 1 to 4 Respondents/1 to 4 Petitioners
5.R.Ashok ... 5th Respondents/1st Respondent

Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree, dated 09.01.2017, made in M.C.O.P.No.4889 of 2011 on the file of the Motor Accidents Claims Tribunal (IV Judge, Court of Small Causes), Chennai.

For Appellant : Mr.R.Ravichandran

For Respondents : Mr.V.Velu (For R1 to R4)

JUDGMENT

R. SUBBIAH, J.,

Challenging the quantum of compensation awarded by the Motor Accidents Claims Tribunal (IV Judge, Court of Small Casues), Chennai, in and by award dated 09.01.2017 in M.C.O.P.No.4889 of 2011, the present appeal has been filed by the Insurance Company.

2.The 1st respondent herein is the wife, the respondents 2 & 4 are the minor sons and the 3rd respondent is the minor daughter of the deceased Kumar, who had died in a motor accident that had occurred on 06.05.2011.

3.Since the present appeal has been filed questioning the quantum of compensation alone, it is not necessary for this Court to deal with the other aspects of the award passed by the Tribunal.

4.So far as the quantum of compensation is concerned, it is the case of the claimants before the Tribunal that the deceased Kumar was working as a Mason and earning a sum of Rs.15,000/- per month. In order to prove their claim, the 1st claimant examined herself as P.W.1, besides examining one Sundaram, employer of the deceased as P.W.3, who had stated in his evidence that the deceased Kumar was earning a sum of Rs.15,000/- per month. Since except the evidence of P.W.3 no other documentary evidence was produced on the side of the claimants, the Tribunal by relying upon the judgment of the Hon'ble Supreme Court reported in 2006 ACJ (975) Harendranath Halder & others Vs. New India Assurance Co. Ltd), has fixed a sum of Rs.12,000/- as monthly income of the deceased. Thereafter, the Tribunal has added 30% of the amount (12,000 X 30/100 = 3,600) towards future prospects and thus, arrived at a sum of Rs.1,87,200/- (15,600 x 12 =1,87,200) as annual income of the deceased. Since the dependents are four in number, the Tribunal deducted 1/4th amount towards personal expenses and thus, arrived at a sum of Rs.1,40,400/- (1,87,200 - 46,800 = 1,40,400) as annual contribution to the family. Since the deceased Kumar was aged 40 years at the time of the accident, the Tribunal by applying the multiplier 15, has awarded a sum of Rs.21,06,000/- as loss of dependency. That apart, the Tribunal has awarded a sum of Rs.1,00,000/- towards loss of consortium to the 1st claimant/wife, a sum of Rs.3 lakhs for loss of love and affection to the minor children and a sum of Rs.25,000/- for funeral expenses. Thus, the Tribunal has passed an award for a total sum of Rs.25,31,000/- as compensation. Aggrieved over the same, the present appeal has been filed by the Insurance Company.

5.It is the main grievance of the learned counsel appearing for the appellant/Insurance Company that in the absence of any documentary evidence to show the actual income earned by the deceased Kumar, the Tribunal ought not to have fixed the sum of Rs.12,000/- as monthly income. Therefore, the amount awarded under the head of Loss of Dependency needs proper reduction.

6.Per contra, the learned counsel appearing for the respondents/claimants submitted that though no documentary proof was produced to prove the income earned by the deceased, on the side of the claimants, one Sundaram (employer of deceased) was examined as P.W.3, who had stated in his evidence that the deceased Kumar was earning Rs.15,000/- per month; hence, according to the learned counsel for the respondents/claimants, there is no need to reduce the compensation amount awarded by the Tribunal.

7.Keeping the submissions made on either side, We have carefully gone through the entire materials available on record. From the materials on record, We find that except the oral evidence of P.W.3, no other tangible evidence was produced on the side of the claimant to prove the income earned by the deceased. In our considered opinion, in the absence of any documentary evidence, a sum of Rs.12,000/- per month fixed by the Tribunal as monthly income of the deceased is on the higher side. However, considering the present cost of living, We are of the opinion that a sum of Rs.10,000/- could be fixed as monthly income of the deceased so as to arrive at a just and proper compensation. If Rs.10,000/- is taken as monthly income, the annual income works out to Rs.1,20,000/- (10,000 X 12 = 1,20,000/-). If 30% amount is added towards future prospects, the total comes to Rs.1,56,000/- (1,20,000 + 36,000 = 1,56,000). As the dependents are four in number, 1/4th amount has to be deducted towards personal expenses. Accordingly, if 1/4th amount is deducted, the balance amount is Rs.1,17,000/- (1,56,000 - 39,000 = 1,17,000), which could be the annual contribution to the family. If multiplier 15 is applied based on the age of the deceased, who was 40 years at the time of death, the total loss of dependency comes to Rs.17,55,000/- (1,17,000 X 15 = 17,55,000). Hence, a sum of Rs.21,06,000/- awarded by the Tribunal under the head of loss of dependency is hereby modified and reduced to Rs.17,55,000/-. That apart, We find that the Tribunal has not awarded any amount towards loss of estate. Hence, a sum of Rs.20,000/- is hereby awarded under the head of loss of estate. Except the above modifications, the compensation amounts awarded by the Tribunal under other heads remain unaltered.

8.Consequently, the total compensation amount of Rs.25,31,000/- awarded by the Tribunal is hereby modified and reduced to Rs.22,00,000/-. The breakup details of the modified/reduced compensation amount are as follows_

Loss of Dependency	= Rs. 17,55,000/-
Loss of Consortium	= Rs. 1,00,000/-
Loss of Love and Affection	= Rs. 3,00,000/-
Funeral Expenses	= Rs. 25,000/-
Loss of Estate	= Rs. 20,000/-
Total	= Rs. 22,00,000/-

9.In fine, the appeal is partly allowed and the compensation amount of Rs.25,31,000/- (Rupees Twenty Five Lakhs and Thirty One Thousand Only) awarded by the Tribunal is hereby modified and reduced to Rs.22,00,000/- (Rupees Twenty Two Lakhs Only). The appellant/Insurance Company is directed to deposit the entire modified compensation amount, after deducting the amount if any already deposited, with proportion interest as awarded by the Tribunal, within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the 1st claimant/wife is entitled to withdraw a sum of Rs.10 lakhs by making necessary application before the Tribunal. So far as the shares of the claimants 2 to 4/minor children are concerned, they are entitled to Rs.4 lakhs each. The shares of minor children are directed to be deposited in any one of the nationalized banks in fixed deposit, till they attain majority and the interest thereon could be withdrawn by their mother/1st claimant once in every three months.

Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

ssv

Copy to

The Motor Accidents Claims Tribunal,
(IV Judge, Court of Small Causes),
Chennai.

+1cc to Mr.V.Velu, Advocate, S.R.No.63327

C.M.A.No.2524 of 2017
and
C.M.P.No.13771 of 2017

CA(CO)
CS/22/11/17