IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.11.2017

CORAM:

THE HON'BLE Dr. JUSTICE S.VIMALA

C.M.A.No.2946 of 2017

1. Tmt. Saraswathy
2. Girirajan
3. Tmt. Rajeswari ... Appellants/Petitioners

..vs..

1. K.J.Janakiraman
2. The New India Assurance Co. Ltd.,
City Branch No.1090, Poonamallee High Road,
Periamet, Chennai 600 003 ... Respondents/Respondents

Appeal filed under Section 173 of Motor Vehicles Act 1988, against the judgment and decree, dated 02.08.2017 made in M.C.O.P.No.2480 of 2013 on the file of the Chief Judge, MCOP Tribunal, Chennai.

For Appellants : Mr. S.Ravikumar
For Respondents: Mr. J.Chandran, for R-2,
R-1 exparte before the Tribunal.

J U D G M E N T

The first claimant as the wife, the second and third claimants as son and daughter of the deceased have filed the claim petition for compensation claiming a sum of Rs.10,00,000/-. The claim pertains to the death of one Mohanbabu, aged 63, who had been employed in the Railway Department and later retired as pensioner at the time of the accident and who was getting a pension of Rs.9,700/- per month and also claims to be employed as the Security Guard and who died on 17.02.2013.

2. The Claims Tribunal, on a consideration of the materials, has awarded a sum of Rs.4,16,585/- and the breakup details of the award runs as under:-

Pecuniary Loss	-	Rs.2,80,056/-
Loss of consortium to P-1	-	Rs. 10,000/-
Loss of love and affection	-	Rs. 30,000/-
Medical expenses	-	Rs. 66,529/-
Transport Expenses	-	Rs. 5,000/-
Funeral expenses	-	Rs. 25,000/-
		Rs.4,16,585/-

3. Challenging the award as inadequate, the claimants have filed this Appeal.

4. The learned counsel appearing for the appellants submitted that fixing of income at Rs.5,000/- is not correct and the Tribunal should have followed at least the ratio laid down in the decision reported in (2014) 2 SCC 735 (Syed Sadiq v. United India Insurance Company Limited), where-under in respect of an agriculturist, the Supreme Court has fixed the monthly income at Rs.6,500/-. It is claimed by the appellants that the deceased had been employed as Security Guard at the GPS Security Services and he was in fact earning a sum of Rs.10,000/- per month, apart from his pension. The fervent request made is that atleast the income should be fixed at Rs.6,500/- per month.

5. It cannot be disputed that the retired person also take up private employment after retirement. Therefore, taking the monthly income at Rs.6,500/- and deducting 1/3rd towards the personal expenses, adopting multiplier of 7, the compensation for loss of dependency should be fixed at Rs.3,64,056/-.

6. The next contention of the learned counsel for the appellants is that the Tribunal committed mistake in awarding a meager sum of Rs.10,000/- each, to the claimants towards the loss of love and affection. The next contention is that even though the date of the accident was on 17.02.2013, because of the injuries sustained, the deceased had been battling for life and he died only subsequently and therefore, the medical expenses, which are supported by bills, at Rs.66,529/- should have been allowed by the Tribunal. In other words, the contention is that the pain and sufferings suffered by the deceased which would go to the benefit of loss to estate should have been awarded, is the main contention raised in the grounds of appeal, which is an acceptable argument.

7. Therefore, the award passed by the Tribunal has to be restructured and the breakup details of the award of compensation reads thus:-

Pecuniary Loss	-	Rs.3,64,056/-
Loss of consortium to P-1	-	Rs. 40,000/-
Loss of love and affection	-	Rs. 40,000/-
Medical expenses	-	Rs. 66,529/-
Transport to hospital	-	Rs. 15,000/-
Funeral expenses	-	Rs. 25,000/-
Loss of estate	-	Rs. 15,000/-
		Rs.5,65,585/-

8. In the result, the award is enhanced from Rs.4,16,585/- to Rs.5,65,585/- and this amount of compensation shall be deposited less the amount already deposited along

with interest at 7.5% per annum, from the date of petition till the date of deposit, within a period of four weeks from the date of receipt of a copy of this judgment. The claimants are not entitled to the interest for the default period. The share of the compensation amount shall be apportioned between the appellants / claimants, as per the ratio of proportion made by the Claims Tribunal. On such deposit being made by the second respondent / Insurance Company, (since all the appellants / claimants are majors), the Tribunal shall transfer the compensation award amount to the Savings Bank Accounts of the appellants / claimants. The excess court fee shall be deposited by the claimants / appellants before receiving the copy of this judgment. It is made clear that the pay and recover ordered already by the Claims Tribunal shall stand confirmed as such.

9. In the result, the Civil Miscellaneous Appeal is partly-allowed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

srk

To
1. Chief Judge, MCOP Tribunal, Chennai
2. The Section Officer, V.R.Section, Madras High Court, Chennai 104(2 copies)

+1cc to Mr.J.Chandran, Advocate Sr.No.81080

BR(CO)
sm:19.3.2018