IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 07.11.2017
CORAM:
THE HONOURABLE DR.JUSTICE S.VIMALA

C.M.A. No.2949 of 2017

1. N.Sathyavani,
2. E. Neelagandan
3. N. Muniyammal
4. Minor N. Thulasinathan ... Appellants/Petitioners
rep by his mother and
next friend the first Appellant herein

Versus

1. C. Perumal
2. Cholamandalam Ms.General In. Co. Ltd.,
Hari Nivas Towers,
2nd Floor,
No.163 - A, Thambu Chetty Street,
Chennai - 600 001. ...Respondents/Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the order made in M.C.O.P. No.2028 of 2016, dated 09.08.2017, on the file of the Court of the Chief Judge, MCOP Tribunal, Chennai.

For Appellants : Mr.S.Ravikumar

For Respondent : Mr.N.Vijayaraghavan for R2
Notice Dispensed with for R1
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JUDGMENT

The deceased, Naveen Kumar, aged 21 years, earning a sum of Rs.1,000/= per day, died in the accident that took place on 29.02.2016. The parents, sister and brother of the deceased filed claim petition claiming a compensation in a sum of Rs.30,00,000/-.

2. As against the claim made, the Tribunal, on consideration of oral and documentary evidence, awarded a sum of Rs.10,66,000/- as compensation under the following break up details :-

		Rs.
Loss of income (Rs.8000 + 50% -6000 = Rs.6000 x 12 x 13)	:	9,36,000/-
Loss of love and affection to petitioners 1 to 4	:	1,00,000/-
Transport charges	:	5,000/-
Funeral Expenses	:	25,000/-
		10,66,000/-

3. The claimants have challenged the award as inadequate and meagre on the following grounds, by filing this appeal :-

i) The Tribunal has not considered the evidence of PW1 who deposed that the deceased was self employed and running Sathyavani Electrical Works at Aminjikarai. Hence the income of deceased should have been accepted by the Tribunal and fixed at atleast Rs.15,000/- instead of Rs.8,000/-.

ii) The Tribunal erred in awarding a meager sum of Rs.25,000/- to each petitioners towards Love and Affection. The Tribunal ought to have awarded a sum of Rs.1,00,000/- for each petitioner.

iii) The Tribunal failed to follow the accepted principles laid down by this Hon'ble High Court and Apex Court and wrongly adopted age of the parents for calculating the loss of income instead of taking the age of the deceased.

4. Learned counsel appearing for the appellants contended that the compensation granted under the head love and affection is on the lower side and the same needs to be enhanced, keeping in mind the age of the deceased. It is further contended that the income fixed at Rs.8,000/- is on the lower side. It is further contended that the Tribunal has taken the age of the parents for arriving at the loss of income instead of taking the age of the deceased and, therefore, the compensation needs to be enhanced.

5. Per contra, learned counsel appearing for the 2nd respondent/insurance company submitted that the Tribunal has appreciated the evidence in proper perspective and has fixed the income at Rs.8,000/- in the absence of any evidence. It is further submitted that the future prospective increase in income at 50% is not justified and the Tribunal ought to have fixed the same at 40%. Therefore, necessary reduction has to be made in the award passed by the Tribunal.

6. This Court gave its anxious consideration to the contentions advanced by the learned counsel appearing for the appellants/claimants and the learned counsel appearing for the 2nd respondent and perused the materials available on record as also the order passed by the Tribunal.

7. A perusal of the order passed by the Tribunal reveals that the Tribunal, in the absence of any material on record, has fixed the monthly income of the deceased at Rs.8,000/- p.m. after adding future prospective increase in income and has quantified the compensation. However, erroneously the Tribunal has adopted 50% towards future prospective income of the deceased, which should have been only 40%. However, as rightly contended by the learned counsel for the appellant, the multiplier should be adopted based on the age of the deceased and not on the basis of the age of the parents. In the case on hand, the age of the deceased being 21, the correct multiplier to be adopted is 18, but taking the age of the parents, wrong multiplier of 13 has been adopted. Accordingly, while this Court fixes the income at Rs.8,400/-, which is inclusive of future prospective increase in income, after deducting 1/3rd towards the personal expenses of the deceased, fixes the monthly contribution of the deceased to the family at Rs.5,600/- and adopting multiplier of 18, quantifies the compensation at Rs.12,09,600/=.

8. Insofar as the compensation awarded under the head loss of love and affection is concerned, though it is contended that the said compensation is on the lower side, however, considering the overall circumstances, this Court is of the considered opinion that the same does not warrant any interference and, accordingly the same is confirmed. The compensation awarded under the other heads also being justifiable and reasonable, no interference is warranted and, accordingly, the same is confirmed.

9. Accordingly, the compensation awarded by the Tribunal is enhanced from Rs.10,66,000/- to Rs.13,49,600/- as mentioned below:-

Sl. No.	Head	Amount awarded Rs.
1	Loss of Income (Rs.8,400/3 = 5600 X 12 X 18) Rs.5,600 x 12 x 18	Rs.12,09,600/-
2	Love and affection to petitioners 1 to 4	1,00,000/-
3	Transportation charges	10,000/-
4	Funeral expenses	15,000/-
5	Loss to estate	15,000/-
	Total	13,49,600/-

10. In the result, the Civil Miscellaneous Appeal is allowed to the extent indicated above. No costs. Consequently, connected miscellaneous petition is closed. The appellants/claimants shall deposit the requisite court fee, if any, on the enhanced compensation amount before receiving a copy of this judgment.

11. The Insurance Company/2nd respondent herein is directed to deposit the entire amount of compensation, as enhanced by this Court above, less the amount, if any, already deposited, with interest @ 7.5% from the date of petition till the date of deposit to the credit of the claim petition, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the share as per the ratio of apportionment made by the Tribunal directly to the bank account of the respective claimants/appellants within a period of two weeks thereafter.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vsi2/GLN

To
1. The Chief Judge, MCOP Tribunal, Chennai.

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

+1 cc to Mr.N.Vijayaraghavan Advocate sr 79196

C.M.A. No.2949 of 2017

sks(co)
aa04/04/2018