IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2017

CORAM:

THE HONOURABLE Dr. JUSTICE S.VIMALA

C.M.A.No.571 of 2017
and C.M.P.No.3406 of 2017

The Divisional Manager,
United India Insurance Co. Ltd.,
No.46,Katpadi Road,
Now at :Motor Third Party Claims Hub,
Silingi Building, 4th Floor,
No.134, Greams Raod,
Chennai - 600 006. ... Appellant / 2nd respondent

versus

1. Selvi
2. Mani
3. Minor Arunkumar
(R3 is rep. by his mother
the Natural Guardian first
respondent) ... Respondents 1 to 3/Petitioners 1 to 3

4.Radhakrishnan ... 4th respondent/1st respondent

Prayer : This Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 10.03.2014 made in M.C.O.P.No.377 of 2013 on the file of the Motor Accident Claims Tribunal (Additional Sub Court), Tiruvannamalai.

For Appellant : Mr.P.Sankaranarayanan

For R1 to R3 : Mr.B.Jawahar

R4 : Exparte

JUDGMENT

One Karthikeyan, who was aged about 19 years, working as a Manager in a Private Company and earning a sum of Rs.8,000/- p.m., met with an accident on 23.06.2013 and sustained grievous injuries and later succumbed to those injuries. Hence, the mother, father and brother of the deceased filed a claim petition in M.C.O.P.No.377 of 2013 before the Motor Accident Claims Tribunal (Additional Sub Court), Tiruvannamalai, claiming compensation of Rs.10,00,000/-.

2. As against the claim made, the Tribunal, after considering the oral and documentary evidence, has awarded a sum of Rs.7,26,000/- payable with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit. The break-up details of the compensation read as under:

Loss of income	-	Rs.6,48,000/-
Loss of love and affection to the 1st and 2nd petitioners	-	Rs. 50,000/-
Loss of love and affection to the 3rd petitioner	-	Rs. 15,000/-
Funeral expenses	-	Rs. 10,000/-
Transport expenses	-	Rs. 3,000/-
Total	-	Rs.7,26,000/-

3. Challenging the quantum of compensation awarded by the Tribunal, the Insurance Company has filed the Civil Miscellaneous Appeal.

4. The learned counsel appearing for the appellant would submit that the Tribunal has erred in fixing the monthly income of the deceased at Rs.4,500/- p.m. and since the deceased was a bachelor, the Tribunal ought to have taken the contribution of the deceased at Rs.2,250/- p.m. Further, the Tribunal ought not to have awarded a sum of Rs.15,000/- towards loss of love and affection to the minor third petitioner as he cannot be termed as a dependent of the deceased. Hence, the amount awarded by the Tribunal is claimed to be excessive.

5. A perusal of the award would go to show that the income of the deceased has been taken at Rs.4500/- p.m. as there was no document to prove the income of the deceased at Rs.8,000/- p.m. as claimed in the petition. Deducting 1/3rd towards his personal expenses, i.e. Rs.1500/-, the monthly contribution of the deceased has been taken at Rs.3,000/- and as per the decision of the Sarla Verma's case, the proper multiplier of '18' has been adopted and the loss of dependency has been estimated at Rs.6,48,000/-.

6. The Hon'ble Apex Court in the case of Reshma Kumari and Ors. vs. Madan Mohan and another (in Civil Appeal No.4647 of 2009 dated 2nd April 2013, has held as follows:

> 37. As regards deduction for personal and living expenses, in Sarla Verma, this Court considered Susamma Thomas, Trilok Chandra and Fakeerappa and finally in paras 30, 31 and 32 of the Report held as under:
>
> "30…….Having considered several subsequent decisions of this Court, we are of the view that where the deceased was married, the deduction towards

personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependent family members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceeds six.

31. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent(s) and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependant. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependants, because they will either be independent and earning, or married, or be dependent on the father.

32. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where the family of the bachelor is large and dependent on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third."

6.1. As per the decision of the Hon'ble Supreme Court (cited supra), the deduction towards personal expenses should be 50%. In the case on hand, the claimants are mother, father and brother of the deceased. It is not known whether the brother was a dependent on the income of the father or brother. Therefore, the deduction of 1/3rd is not correct and deduction should be 50%. However it is to be pointed out that future prospective increase in the income has not been added to the monthly contribution of the deceased. If that is taken into account, the award under the loss of dependency would become inadequate.

6.2. So far as the contention of the appellant that the compensation awarded towards loss of love and affection to the minor third petitioner is unwarranted, it is relevant to point out that the brother of deceased was a minor and he has lost the love, affection, guidance and support of his brother and therefore, the amount awarded towards loss of love and affection to the minor is correct. Therefore, the amount awarded by the Tribunal cannot be said to excessive.

7. Hence, the Civil Miscellaneous Appeal is dismissed, confirming the award dated 10.03.2014 made in M.C.O.P.No.377 of 2013 on the file of the Motor Accident Claims Tribunal (Additional Sub Court), Tiruvannamalai.

8. The Insurance Company is directed to deposit the entire amount of compensation less the amount already deposited if any, along with interest at the rate of 7.5% p.a. 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 major claimants are permitted to withdraw their share of the amount as per the apportionment made by the Tribunal. The minor's share shall be deposited in fixed deposit in any one of the Nationalized Bank for a period of three years, till he attains majority. The mother of the deceased is permitted to withdraw the interest accrued thereon once in three months. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

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Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal
(Additional Sub Judge),
Thiruvannamalai.

C.M.A.No.571 of 2017

PVS(CO)
GN(09/03/2018)