IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.734 of 2017 and
C.M.P.No.4075 of 2017

M/s. New India Assurance Co. Ltd.,
3rd Party Motor Claim Cell,
Having its office at,
No.45, 2nd Land Beach,
Moore Street, Chennai - 600 001.
... Appellant/2nd Respondent

vs.

1. Mrs.K.Subbulakshmi
2. Mr.K.Hemachengali
3. Mr.K.Hemasaravanan ..Respondents 1 to 3/claimants
4. Mr.A.Damodaran ... 4th Respondent/1st Respondent
5.

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Order and Decreetal Order in MCOP No.319 of 2011 dated 17.09.2013 on the file of Motor Accidents Claims Tribunal (IV Additional District Judge), Ponneri at Thiruvallur.

For Appellant : Mr.J.Chandran
For Respondents: Mr.T.S.Baskaran(for R1 to R3)

J U D G M E N T

[Order of the Court was made by M.GOVINDARAJ, J.]

Challenging the quantum of compensation of Rs.25,00,000/- awarded in MCOP No.319 of 2011 dated 17.09.2013 on the file of MACT [IV Additional District Judge], Ponneri, to the legal representatives of the deceased, the 2nd respondent-Insurance Company has come up with the present appeal. The claimants are the wife and two sons of the deceased. Deceased is said to have been 50 years of age, at the time of accident. He was running textile business in the name and style of Kamatchi Cotton Sarees. His business is to purchase sarees and sell the same in the market, by which, he was earning a sum of Rs.3,50,000/- per year. The claim was for Rs.69,50,000/-. The Tribunal below after considering the evidence has come to the conclusion that the claimants are entitled to Rs.25,00,000/- as compensation and apportioned the same as hereunder

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|---|---|---|
| Funeral Expenses | : | Rs. 10,000/- |
| Loss of love and affection | : | Rs. 50,000/- |
| Loss of consortium | : | Rs. 1,00,000/- |
| Loss of estate : | | |
| [Rs.15,000/- x 12 x 13] | : | Rs.23,40,000/- |
| Total | : | Rs.25,00,000/- |

2. The appellant-insurance company has challenged the quantum of compensation given to the claimants on the ground that the age of the deceased is improbable and the income is not proved by filing the acknowledgment of Income Tax returns. There is no loss of earning as the business is continued.

3. The deceased is said to have been died at the age of 50 years. Whereas, his wife /1st claimant, was aged about 48 years and their sons were aged about 32 years and 28 years, respectively. If that is taken to be correct, the deceased should have married the 1st claimant, at the age of 18 wherein, the 1st claimant, should have been 16 years of age, at the time of marriage. According to the learned counsel, marriage at such an young age is highly improbable and the tribunal has not considered this aspect at all. Therefore, it is the contention of the learned counsel for the appellant-Insurance company that the age of the deceased must have been higher and the multiplier applied is without application of mind. Therefore, on consideration of this point, it is contended that the award should be set aside and the claimants have to prove the correct age, as the burden of proof lies on them. The 2$^{nd}$ point was that the income was not proved by filing the acknowledgment of income tax returns filed for the year 2009-10 and 2010-11. Exs.P9 and P10 are Income tax returns for the years 2009-10 and 2010-11.



4. Per contra, learned counsel appearing for the respondents/claimants has produced a copy of the Income tax returns for the years 2009-10 , wherein it is seen that the payment was made on 17.12.2009 for the IT returns of the year 2009-10.

5. It is also brought to our notice that the business was shown as purchase and sale of cotton sarees. Therefore, it is the contention of the learned counsel appearing for the appellant that there is no loss of income as the business could be carried on by the claimants themselves and the claimants are not entitled to claim the contribution earned by the deceased on this count.

6. But the learned counsel appearing for claimants would submit that the business was carried on by the deceased on his individual capacity. On his death, the business was also closed and no business activity was continued thereafter.

7. On consideration of Ex.P9 and P10, it could be seen that the business was run as a proprietary concern [purchase and sale of cotton sarees]. In that case, the deceased, must have carried on the business in his individual capacity and status on the income tax returns also shows the assessee as individual and not a firm or company. In that event, on the death of the deceased the purchase and sale could have been stopped and consequently, the contribution to the family also is lost. The argument of the learned counsel for the claimant is borne out by records. Therefore, this Court is of the considered opinion that the income tax returns of the previous year 2009, before the date of accident can be taken as the only document and the tribunal has rightly considered the same as proof of income and arrived at the loss of income of Rs.23,40,000/-. Therefore, it cannot be interfered with.

8. The next point is that the age of the deceased at the time of death must have been higher and marriage at the age of '18', is highly improbable. We consider that the age of the deceased is proved by Ex.P2, ie., Postmortem certificate. With regard to the proof of age, the respondent/appellant-Insurance company, has not elicited anything contra, by way of cross examination. In absence of any evidence before the tribunal, the conclusion arrived at by the tribunal on the basis of postmortem certificate cannot be setaside. The Insurance Company has also failed to ascertain the factum by positive evidence. In certain communities, it is not improbable that the marriage is solemnized at the age of 18 in those days. Therefore this Court is not inclined to interfere with the finding without any strong evidence to disbelieve that aspect.

9. Therefore, the award passed by the tribunal is confirmed and the Civil Miscellaneous Appeal is dismissed. No costs.

Consequently, the connected Civil Miscellaneous Petition is closed.

10. It is stated that the entire award amount with proportionate interest and costs, has already been deposited to the credit of MCOP No.319 of 2011 dated 17.09.2013 on the file of Motor Accidents Claims Tribunal (IV Additional District Judge), Ponneri at Thiruvallur.

11. Consequent to the dismissal of the appeal, the respondent/claimants are permitted to seek for withdrawal of the award amount, as apportioned by the tribunal, by making necessary applications before the tribunal.

-s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

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To

IV Additional District Judge
The Motor Accident Claims Tribunal,
Ponneri at Thiruvallur.

+1 CC to Mr.J. Chandran, Advocate sr 16097
+1 CC to Mr.T.S. Baskaran, Advocate sr 15674

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