

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 27.02.2017

CORAM

THE HONOURABLE Dr.JUSTICE S.VIMALA

C.M.A.No.971 of 2017
and C.M.P.No.4837 of 2017

New India Assurance Co. Ltd.,
Rep. by its Branch Manager,
Villupuram. ... Appellant/2nd Respondent

Vs

1.Pushpagandhi
2.Jolamalini ...1 & 2 Respondents/Claimants
3.R.Muthu ...3rd Respondent/1st Respondent

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 10.09.2009 made in M.C.O.P.No.553 of 2008 on the file of the Motor Accident Claims Tribunal, Principal District Court, Villupuram.

For Appellant : Mr.S.Manohar

J U D G M E N T

The deceased, Arugadoss, aged 55 years, doing real estate business and thereby, earning a sum of Rs.9,000/- per month, met with an accident that took place on 02.06.2008 and succumbed to the injuries sustained in the accident. Therefore, the legal representatives of the deceased filed a claim petition claiming compensation in a sum of Rs.5,00,000/-.2. The Tribunal, on consideration of oral and documentary evidence, awarded compensation in a sum of Rs.1,40,000/-, the break-up details of which are as under:

Loss of income	-	Rs.1,20,000/-
Funeral expenses	-	Rs. 5,000/-
Loss of estate	-	Rs. 15,000/-

Total - Rs.1,40,000/-

Challenging the award as excessive, the Insurance Company has filed this appeal.

3. Though very many grounds have been raised in the appeal,

however, at the time of argument, the learned counsel for the appellant has restricted his argument to the quantum of compensation alone and therefore, this Court is not venturing into the other grounds raised by the appellant.

4. Learned counsel appearing for the appellant submitted that there being no proof for income of the deceased, the fixation of notional income at Rs.3,000/- p.m. is on the higher side. He further submitted that the Tribunal ought to have deducted 50% from the annual income of the deceased towards personal expenses instead of 1/3rd deduction. Hence, the award requires to be reduced.

5. This Court gave its anxious consideration to the contentions advanced by the learned counsel for the appellant and perused the materials available on record as also the order passed by the Tribunal.

6. A perusal of the award passed by the Tribunal reveals that on the side of the claimants, copy of ration card has been filed, which shows the age of the deceased as 63 years, whereas, in the claim petition, the age of the deceased was mentioned as 55 years. Hence, the Tribunal has fixed the age of the deceased as 63 years. So far as the avocation of the deceased is concerned, it is claimed in the claim petition that the deceased was doing real estate business and earning a sum of Rs.9,000/- per month. However, no proof has been filed by the claimants to substantiate the same. In the absence of any documentary evidence, the Tribunal has fixed the monthly income of the deceased at Rs.3,000/- and considering the number of members, the Tribunal deducted 1/3rd amount (i.e.1,000/-) towards personal expenses and quantified the contribution of the deceased to the family at Rs.2,000/- p.m. Based on the age of the deceased at 63 years, the Tribunal has adopted the multiplier of 5 and quantified the compensation towards loss of income at Rs.1,20,000/- [Rs.2,000 x 12 x 5]. The Tribunal has also awarded a sum of Rs.5,000/- towards funeral expenses and a sum of Rs.15,000/- towards loss of estate.

7. The Tribunal, as per the ratio laid down in the decision of the Apex Court in Sarla Verma's case (2009 5 LW 561), has rightly deducted 1/3rd amount towards personal expenses and adopted the correct multiplier of 5, while quantifying the compensation. Similarly, the Tribunal, in the absence of any proof to substantiate the monthly income, has also fixed the notional income at Rs.3,000/-, which cannot be said to be excessive. Therefore, the compensation quantified towards loss of income cannot be said to be excessive and warrants no interference.

8. Insofar as the compensation awarded under the other

heads, viz., loss of estate and funeral expenses are concerned, the compensation awarded is very low. However, at this point of time, this Court is not inclined to enhance the compensation awarded under the non-pecuniary heads. Accordingly, the compensation awarded under the above heads are confirmed.

9. For the reasons aforesaid, there being no merits the appeal is liable to be dismissed. Accordingly, the appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

10. The appellant/Insurance Company is directed to deposit the entire amount of compensation as awarded by the Tribunal, less the amount, if any, already deposited, along with interest at 7.5% per annum 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. The claimants are entitled to compensation as per the ratio of the apportionment made by the Tribunal. On such deposit being made, the Tribunal is directed to transfer the respective share amounts of the claimants directly to their bank account through RTGS within a period of two weeks thereafter.

Sd/-

Assistant Registrar(Audit)

//True Copy//

Sub Assistant Registrar

gya/GLN

To

1. Motor Accident Claims Tribunal,
Principal District Court, Villupuram.
2. The Section Officer,
VR Section,
High Court, Madras.

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and
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KJ(CO)
CS/14/05/18