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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:11.09.2017

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THE HONOURABLE Dr.JUSTICE S.VIMALA

C.M.A.No.2894 of 2017

and

C.M.P.No.16972 of 2017

Branch Manager

United India Insurance Co.Ltd.,

Tindivanam.

... Appellant/2nd Respondent

/Vs/

1.Vijayambal

2.Duraisamy

3.Selvi

4.Pattammal

5.Rathinaprakash

... Respondents/Petitioner 1 to 4
/1st Respondent

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 28.07.2004 made in M.C.O.P.No.174 of 2004 on the file of the Motor Accidents Claims Tribunal, FTC-1, Tindivanam.

For Appellant : Mr.S.Arunkumar

JUDGMENT

The deceased, Balu, aged 50 years, doing Mason Work earning a sum of Rs.4,500/- per month, died in an accident on 01.06.2002. The legal representatives of the deceased, filed the claim petition claiming compensation in a sum of Rs.7,00,000/=.

2. The tribunal, on consideration of the oral and documentary evidence, quantified the compensation at Rs.4,67,400/-. Challenging the compensation awarded by the Tribunal as excessive, the present appeal has been preferred by the appellant/insurance company.



3. The main contention of the learned counsel appearing for the appellant is that the compensation awarded at Rs.4,67,000/- is excessive, especially, when there is no evidence to show the monthly income earned and the fixation of Rs.3,125/- as the monthly income is on the higher side and requires reduction. It is further contended that the multiplier adopted is also not correct.

4. The Tribunal, on the basis of the evidence of PW2, who has spoken about the avocation and earnings of the deceased, has found that the deceased being a mason, the possibility that the deceased would be employer for 25 days in a month cannot be ruled out. Accordingly, considering the date of accident, the Tribunal fixed the daily income of the deceased at Rs.125/= and quantified the monthly income at Rs.3,125/=. Further, considering the total members whom the deceased was taking care of, the Tribunal fixed the monthly contribution of the deceased to the family at Rs.2,400/= and adopting multiplier of 13, loss of income was quantified at Rs.3,74,400/-. The Tribunal further awarded a sum of Rs.3,000/- towards funeral expenses; Rs.25,000/- towards future prospects; Rs.10,000/- towards loss of love and affection; Rs.15,000/- towards pain and sufferings and Rs.40,000/- towards loss of estate. In all, the Tribunal awarded a sum of Rs.4,67,400/- as compensation.

5. Though it is contended by the learned counsel for the appellant that the compensation awarded towards loss of dependency is excessive and that the notional income fixed is on the higher side and the multiplier adopted is also not correct, however, this Court is of the considered opinion that the said contention does not deserve acceptance.

6. It is evident from the records that on the basis of the evidence of PW2, who has spoken about the avocation and earnings of the deceased, in the absence of any documents to substantiate the said evidence, the Tribunal notionally fixed the income at Rs.3,125/=. The deceased having been working as a mason, the Tribunal was fully justified in fixing the daily income at Rs.125/-, keeping in mind the date of accident. It is to be pointed out that the Tribunal has not considered the future prospective increase in income of the deceased. Had future prospective increase been considered, the compensation would have been much higher. Therefore, the fixation of monthly contribution to the family and the adoption of multiplier cannot be termed to be excessive or disproportionate. Accordingly, the quantification of compensation arrived at by the Tribunal under the head loss of dependency is confirmed.



7. Insofar as the compensation awarded under the head pain and suffering is concerned, it is to be pointed out that no amount can be awarded towards pain and suffering in the case of death of a person. Therefore, the said compensation awarded is rejected. Similarly, the compensation awarded towards future prospects is totally unwarranted, as the same would fall under the head loss of dependency. Accordingly, the said compensation is also rejected.

8. However, it is evident from the records that no amount has been awarded towards loss of consortium to the wife. In such circumstances, this Court is of the considered opinion that a sum of Rs.40,000/- would be a just and reasonable compensation towards loss of consortium.

9. A further perusal of the records reveal that the compensation awarded towards loss of love and affection and transportation expenses are on the very lower side. However, keeping in mind the fact that the accident had happened in the year 2002, this Court is not inclined to enhance the compensation awarded on those heads and accordingly the said compensation are confirmed.

10. Accordingly, the compensation awarded by the Tribunal is confirmed, however redistributing the compensation under the heads as shown hereunder :-

Loss of Dependency	: Rs.3,74,400/=
Loss of Consortium	: Rs. 40,000/=
Loss of Love & Affection	: Rs. 10,000/=
Transport Expenses	: Rs. 3,000/=
Loss of Estate	: Rs. 40,000/=

Total	Rs.4,67,400/=

11. For the reasons aforesaid, this civil miscellaneous petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.



12. The appellant/Insurance Company is directed to deposit the entire award amount along with interest at 9% per annum from the date of petition till the date of deposit and costs as ordered by the Tribunal, less the amount, if any, already deposited, 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 award amount, as per the ratio of apportionment, directly to the bank account of the claimants through RTGS within a period of two weeks thereafter.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

sms/GLN

To

- 1.The Motor Accident Claims Tribunal,
The Chief Small Causes Court, Chennai.
2. The Section Officer, VR Section,
High Court, Madras.(2 Copies)

C.M.A.No.2894 of 2017

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