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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2017

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THE HONOURABLE DR. JUSTICE S.VIMALA

C.M.A. No.2016 of 2017

in

C.M.P. No.10825 of 2017

The National Insurance Company Limited,
Represented by their Branch Manager,
Branch Office, 81 D Chetty Stret,
Opposite to Bus stand,
Thiruchengode 637 211

.. Appellant/2nd Respondent

versus

1. R. Vennila
2. S. Rajasekar
3. R. Rajalakshmi
4. A Muthu

..1 to 3 Respondents/1 to 3 Petitioners
.. 4th Respondent/1st Respondent

Appeal filed under Section 173 of Motor Vehicles Act, 1988 to set aside the Judgment and Decree dated 31.12.2004 made in M.C.O.P. No.581 of 2003 on the file of the Motor Accidents Claims Tribunal, Chief Judge, Small Causes Court, Chennai.

For Appellant : Mr. S.Vadivel

J U D G M E N T

The deceased, Senthil Kumar, aged 23 years, a student of Engineering, died in an accident that happened on 13.07.2002. The legal representatives of the deceased filed claim petition claiming a sum of Rs.15,00,000/- as compensation.

2. The Tribunal, based on oral and documentary evidence, passed an award for a sum of Rs.8,06,030/-, the break up of which is as hereunder :-

Loss of Dependency	-	Rs.7,20,000/-
Medical Expenses	-	Rs. 41,030/-
Pain & Suffering	-	Rs. 15,000/-
Loss of Expectation of Life	-	Rs. 10,000/-
Loss of Love & Affection	-	Rs. 15,000/-
Funeral Expenses	-	Rs. 5,000/-

Total		Rs.8,06,030/-



Challenging the award as excessive and disproportionate, the present appeal has been filed by the appellant/Insurance Company.

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3. The main contention for the learned counsel appearing for the appellant/Insurance Company is that the deceased was bachelor as well as student and, therefore, the the Tribunal ought not to have fixed monthly income at Rs.6,000/- per month. It is also contended that multiplier adopted is also erroneous. It is the further contention of the learned counsel for the appellant that in case of death, the compensation awarded towards pain and suffering is not sustainable

4. A perusal of the records reveal that immediately after the accident on 13.07.2002, the deceased was admitted to the Appollo Hospital, where he succumbed to the injuries on 16.07.2002. The records further reveal that the deceased was a Diploma holder in Mechanical Engineering and it is the case of the claimants that had he lived, he would have gone on to earn atleast a sum of Rs.20,000/- per month. The Tribunal, based on Ex.P.9 Transfer Certificate and Ex.P.3 Post Mortem Certificate, fixed the age of the deceased at 23 years. The Tribunal further noted the social awareness of the deceased, which stood reflected through Ex.P.19 certificate of appreciation relating to blood donation. Keeping all the above facts in mind, the Tribunal, fixed the notional monthly income of the deceased at Rs.6,000/- and deducting $1/3^{\text{rd}}$ towards his personal expenses, the monthly contribution to the family was fixed at Rs.4,000/-. Considering the age of the first claimant at 44 years, the Tribunal adopted multiplier of 15 and quantified the compensation at Rs.7,20,000/=. The Tribunal further awarded a sum of Rs.41,030/- towards medical expenses. The Tribunal awarded a sum of Rs.15,000/- towards pain and suffering keeping in mind the fact that the deceased was alive and under treatment from 13.07.2002 to 16.07.2002 and died only on 16.07.2002. A further sum of Rs.10,000/- was awarded towards loss of expectation of life; Rs.15,000/- was awarded towards loss of love and affection and Rs.5,000/- was awarded towards funeral expenses. In all, the Tribunal quantified the total compensation at Rs.8,06,030/-.

5. This Court has considered the contention advanced by the learned counsel for the appellant and perused the order passed by the Tribunal. The contention of the learned counsel for the appellant that the fixation of notional income at Rs.6,000/- is on the higher side deserves to be rejected even at the threshold. The materials available on record reveal that the deceased was a student of Mechanical Engineering and had he gone on to live his life, he would have definitely earned much more. Though it is contended that the fixation of monthly income is on



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the higher side, it is pertinent to point out that even in the case of persons working in unorganised sector, the Supreme Court has fixed the monthly income at Rs.6,500/- in respect of an occurrence that had happened in the year 2008. Though in the present case, the accident had happened in the year 2002, however, keeping in mind that the deceased was a Diploma Holder in Mechanical Engineering, the Tribunal had appreciated the materials on record and fixed the notional monthly income at Rs.6,000/-. This Court, on a consideration of the entire facts and circumstances coupled with the evidence on record, is of the considered view that the notional monthly income fixed at Rs.6,000/- cannot be said to be excessive and it deserves to be confirmed.

6. Further, it is to be pointed out that the Tribunal has not taken into consideration future prospective increase in income of the deceased. Not only future prospective increase not been considered, the adoption of multiplier on the basis of the age of the father of the deceased is also erroneous. The multiplier ought to have been adopted on the basis of the age of the deceased. Had the proper multiplier been adopted on the basis of the age of the deceased and future prospects been considered, the quantification of compensation would definitely have been on the higher side. In such view of the matter, the compensation awarded cannot be said to be excessive and accordingly, the same is confirmed.

7. Insofar as the compensation awarded towards pain and suffering is concerned, though it is the contention of the learned counsel for the appellant that the said award is unsustainable, however, it is to be pointed out that the deceased, though met with the accident on 13.7.2002, however, was hospitalised and fought for his life and, ultimately, succumbed to his injuries on 16.7.2002. Definitely during the interregnum period, the deceased would have definitely felt the pain and suffering due to the injuries sustained by him. In such view of the matter, the award of compensation towards pain and suffering by the Tribunal is justified and no interference is called for.

8. Insofar as the compensation under the heads loss of love and affection, loss of enjoyment of amenities and funeral expenses are concerned, the compensation awarded is very meagre. However, keeping in mind the fact that the accident had happened in the year 2002 and almost a decade and a half has passed since the accident, this Court is not inclined to interfere with the compensation awarded. Accordingly, the compensation awarded is confirmed.

9. For the reasons stated above, this appeal being devoid of merits deserves to be dismissed and, accordingly, the same is



dismissed. Consequently, connected miscellaneous petition also closed.

10. The appellant/insurance company is directed to deposit the entire award amount as quantified by the Tribunal along with interest and costs, 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 order. On such deposit being made, the Tribunal is directed to transfer the amount directly to the bank account of the respective claimants through RTGS, as per the ratio of apportionment ordered by the Tribunal, within a period of two weeks thereafter.

s/d-

Assistant Registrar (CS-V)

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Sub-Assistant Registrar

rkp/GLN

To

1. Motor Accidents Claims Tribunal, Chief Judge
Small Causes Court,
Chennai.
2. The Section Officer, VR Section,
High Court, Madras.

+1 CC to Mr.S. Vadivel, Advocate sr 43494

C.M.A. No.2016 of 2017

SJ(CO)
SP(29/05/2018)