



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.07.2017

CORAM

THE HONOURABLE Dr. JUSTICE. S.VIMALA

C.M.A.No.2591 of 2017
and C.M.P.No.14192 of 2017

New India Assurance Co. Ltd.,
3rd Cross, R.P.Road, Extension,
Nanjankoodu Taluk,
Karnataka State.

... Appellant / 3rd respondent

versus

1. K.Deepa
2.Minor K.Kavipriya
(Guardian Next Friend Mother
K.Deepa)
3. Deivathai
4. Syed Muneer
5. R.Srikanta
(4th and 5th respondents are
ex parte before the Tribunal)

... Respondents 1 to 3/Claimants
... 4th respondent/1st respondent
... 5th respondent/2nd respondent

Prayer: Appeal filed under Section 173 of Motor Vehicle Act 1988, against the Judgment and Decree dated 22.09.2006 made in M.A.C.T.O.P.No.344 of 2004 on the file of the Motor Accident Claims Tribunal (Principal Sub-Judge), Gobichettipalayam.

For Appellant : Mr.S.Jayasankar

JUDGMENT

The deceased, Kodhandapani, aged 30 years, employed in a clerical cadre at M/s. Bannariamman Sugar's Ltd., Nanjangode, and earning a sum of Rs.5305.35 p.m. apart from earning a bonus of 18% to 20% on total income, died in the accident that occurred on 23.02.2002. The wife, aged 24 years, child aged 5 years and mother aged 55 years, filed a claim petition claiming compensation of Rs.30,00,000/-

2. As against the claim made, the Tribunal, based on oral and documentary evidence, awarded a sum of Rs.14,58,000/- under the following break-up details:

Loss of income	-	Rs.14,28,000/-
Loss of consortium	-	Rs. 20,000/-



Loss of love and affection	-	Rs.	5,000/-
Cremation expenses	-	Rs.	5,000/-
Total	-	Rs.	14,58,000/-

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Challenging the above compensation granted as excessive, the Insurance Company has filed this appeal.

3. The main contention raised by the learned counsel for the appellant is that the monthly income fixed at Rs.10,500/- is excessive, whereas under the Salary Certificate under Ex.P4, the monthly income shown was only Rs.5305.35. The second contention is that considering the age of the deceased, the multiplier to be adopted is '16' and not '17'.

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

5. The Tribunal has relied upon the salary certificate, in which, the monthly income has been shown as Rs.5305.35. In the same certificate, it had been mentioned that by including the bonus, the monthly income would be Rs.7,000/-. Considering the future prospective increase in income, the monthly income has been fixed at Rs.10,500/-. The calculation memo issued by the Bannariamman Sugars Ltd. has also been filed and apart from that, an employee from the same concern has been examined to prove the monthly income. Therefore, when the monthly income has been fixed based on the documentary evidence, which has been duly substantiated by oral evidence, the contention of the learned counsel for the appellant that the monthly income fixed is excessive cannot be sustained and, accordingly, the said contention is liable to be rejected.

6. Insofar as the other contention regarding adoption of multiplier, the said contention deserves to be sustained. As per the ratio laid down Sarla Verma's case ((2009) 4 MLJ 997), in respect of age group 31 to 35, the multiplier to be taken is only 16. Accordingly, the correct multiplier to be adopted is 16 and not 17 as had been done by the Tribunal.

7. However, it is borne out by record that only a paltry sum of Rs.5,000/- has been awarded as compensation towards loss of love and affection to the 2nd and 3rd claimants. The 2nd claimant, viz., the child of the deceased was aged only about 6 years on the date of occurrence. Therefore, this Court is of the considered opinion that compensation under the head loss of love and affection needs enhancement. Therefore, without



interfering with the total quantum awarded, this Court feels that the excessive amount awarded by adopting an extra one (1) multiplier will enure to the benefit to be given under the head loss of love and affection.

8. On a consideration of the facts and circumstances and the evidence available on record, this Court finds that the compensation awarded by the Tribunal is fair and reasonable and therefore, it does not require any interference. For the reasons aforesaid, this appeal is liable to be dismissed and, accordingly, the same is dismissed. Consequently, connected miscellaneous petition is closed.

9. The Insurance Company is directed to deposit the entire award amount, less the amount, if any, already deposited, along with interest at the rate of 7.5% p.a. 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 amount directly to the bank account of the major claimants through RTGS within a period of two weeks thereafter. As far as the share of the minor claimant is concerned, the same shall be deposited in interest bearing fixed deposit in any one of the Nationalised Banks till she attains majority and the first respondent is entitled to withdraw the interest accruing on such deposit once in three months.

Sd/-

Assistant Registrar (CS VI)

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Sub Assistant Registrar

ogy/GLN

To

1. The Motor Accident Claims Tribunal
(Principal Sub-Judge),
Gobichettipalayam.
2. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.

C.M.A.No.2591 of 2017

GMR (CO)
GN (26/03/2018)