

IN THE HIGH COURT OF JUDICATUE AT MADRAS

DATED: 12.09.2017

CORAM

THE HONOURABLE DR. JUSTICE S.VIMALA

C.M.A. No.2854 of 2017

and

C.M.P. No.16310 of 2017

The Branch Manager,
M/s.United India Insurance
Company Ltd.
No.28, Meenakshi Complex,
Maiyilam Road,
Tindivanam.

... Appellant/2nd Respondent

versus

1. Muniammal
2. Murugan
3. Kumar
4. Rajavel
5. Mangai
6. Rajendran

...Respondents/Claimants 1 to 5 of
1st Respondent

Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 27.05.2003 made in MCOP No.1156 of 2002 on the file of the Motor Accident Claims Tribunal (Fast Track Court No.I) at Tindivanam.

For Appellant : Ms.N.Mala

J U D G M E N T

The deceased, Veerappan aged 50 years, a Mason by profession, earning a sum of Rs.5,000/- per month, died in the accident that took place on 26.2.2000. The legal representatives of the deceased viz., wife, 3 sons and a daughter have filed the claim petition claiming a sum of Rs.3,25,000/- as compensation.

2. The Tribunal on consideration of materials placed before it has awarded a sum of Rs.3,54,000/- with interest at the rate of 9%p.a. from the date of petition till the date of deposit. Challenging the said award, the insurance company has filed the

present appeal.

3. The Insurance Company has challenged this award on the ground that claimants 2 to 4, the sons of the deceased were major persons and, therefore, the multiplier adopted is on the higher side. It is the submission of the learned counsel for the appellant that the sons of the deceased being major, they cannot be said to be dependent on the earnings of the deceased and therefore, the award is on the higher side. It is the further, submission of the learned counsel for the appellant that in the absence of any oral and documentary evidence to prove the income of the deceased, the fixation of monthly income at Rs.3,000/- by the Tribunal is on the higher side.

4. Heard the contentions advanced by the learned counsel for the appellant and perused the judgment passed by the Tribunal.

5. The factom of the accident is not in dispute so also the negligence aspect is not in dispute. The ground on which the order is assailed is that the monthly income fixed by the Tribunal is on the higher side.

6. A perusal of the order of the Tribunal reveals that based on Ex.P-3, post-mortem certificate, the age of the deceased has been fixed at 50 years. It is true that except the oral evidence, no other evidence has been adduced to substantiate the income of the deceased. Therefore, the Tribunal, taking into consideration the avocation of the deceased, has conservatively and nominally fixed the monthly income at Rs.3,000/- per month. Further, deducting one-third towards personal expenses and adopting the multiplier of 13, the loss of dependency has been arrived at Rs.3,12,000/-. The said award cannot be said to be excessive or unreasonable. A person working as Head Mason would definitely have earned Rs.100/- to Rs.120/- per day and in that view of the matter the Tribunal has fixed the monthly income at Rs.3,000/-. Therefore, this Court finds that no interference is called for with the compensation awarded under the head loss of dependency.

7. Insofar as the other heads are concerned, the Tribunal has awarded a sum of Rs.2,000/- towards funeral expenses; Rs.10,000/- has been awarded under the head pain and sufferings; Rs.10,000/- has been awarded under the head loss of love and affection to claimants (Rs.2,000/- to each claimant); Rs.10,000/- towards future prospects/earnings and Rs.10,000/- towards loss to estate. In all, the total compensation has been quantified at Rs.3,54,000/-.

8. Even at the very outset, it can be safely said that the amount awarded under the head pain and sufferings to the claimants is per se inadmissible and, accordingly, the same needs to be deleted. However, it is seen that no amount has been awarded under the head loss of consortium to the spouse and, therefore, this Court feels that a sum of Rs.10,000/- be allocated as compensation under the said head. Insofar as the compensation awarded under the heads loss of estate, loss of love and affection and funeral expenses, no interference is called for.

9. The other contention advanced by the appellant that the sons, who attained majority cannot be construed as dependents and, therefore, the loss of earnings quantified is on the higher side cannot be sustained. Loss to be compensated is the main idea and the extent of dependency would be relevant to fix the quantum. Extent of dependency could be taken as a criteria only for the purpose of apportionment of the compensation between the claimants. When children grow up, the extent of dependency may be less, but it cannot be said to be totally wiped out. Whatever is earned by the father goes to the credit of the children, either in the form of movable or immovable property, including money. Moreover, when the principle is to compensate the loss suffered by the claimants, the contention is that there is no dependency to the major sons and, therefore, there is no loss is unacceptable. Even moral support and guidance are loss to the major sons, who take the experience of the father in their day to day life. Loss of guidance from the father, who would have gained vast experience cannot be branded as no loss. Therefore, the contention that there is no dependency for the major sons is not sustainable.

10. For the reasons aforesaid, this Court finds that though the compensation awarded by the Tribunal is just, fair and reasonable, only the same needs to be restructured, as under :-

Loss of dependency	:	Rs.3,12,000/-
Funeral expenses	:	2,000/-
Pain and sufferings	:	-
Love and affection to claimants	:	10,000/-
Future prospects / earnings	:	10,000/-
Loss to estate	:	10,000/-
Loss of consortium	:	10,000/-

		Rs.3,54,000/-

11. In the result, the Civil Miscellaneous Appeal is dismissed with the above modification. Consequently, connected Miscellaneous Petition is closed. No costs.

12.The appellant / Insurance Company is directed to deposit the entire award amount along with interest and costs from the date of claim petition till the date of deposit, less the amount, if any 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 claimants through RTGS within a period of two weeks thereafter, as per the apportionment made by the Tribunal.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

vsi2/GLN

To

1. The Presiding Officer,
Motor Accident Claims Tribunal (Fast Track Court No.I) at
Tindivanam.

C.M.A. No.2854 of 2017
and
C.M.P. No.16310 of 2017

GMR(CO)
CS/26/02/18