IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 21.09.2017
CORAM

THE HONOURABLE Dr.JUSTICE S.VIMALA

C.M.A.No.2919 of 2017

1.A.Jayalakshmi
2.Minor.A.Rajasekar
3.Minor.A.Ranjithkumar
(Minors both are rep.by their mother,
1st Claimant as guardian) .... Appellants/Claimants

Vs.

1.A.Ramalingam
2.United India Insurance Company Ltd.,
13-A, Nethaji Road, manjakuppam,
Cuddalore.
.... Respondents/Respondents 1 & 2

Prayer: Civil Miscellaneous Appeal filed under section 173 of Motor Vehicles Act, 1988 to set aside the Judgment and Decree passed in M.C.O.P.No.1961 of 2014, dated 13.08.2015, on the file of Motor Accident Claims Judge, Principal District Judge at Cuddalore.

For Appellant : Mr.A.N.Viswanatha Rao &

For Respondents : Mr.D.Baskaran for R-2
R1 - EXPARTE

J U D G M E N T

The deceased, Arumugam, aged 44 years, Mason by profession, earning a sum of Rs.20,000/- per month, died in an accident that took place on 17.01.2014. The claimants, viz., wife and sons of the deceased have filed the claim petition, claiming a sum of Rs.25,00,000/- as compensation.

2. The Tribunal, on consideration of oral and documentary evidence, passed an award for a sum of Rs.6,74,000/-, the break up of which is as hereunder :-

Loss of Income	-	Rs.6,24,000/=
Loss of Consortium	-	Rs. 10,000/=
Loss of Love & Affection (Rs.10,000/- each to claimants 2 & 3	-	Rs. 20,000/=
Transport Expenses	-	Rs. 10,000/=
Funeral Expenses	-	Rs. 10,000/=
Total	-	Rs.6,74,000/=

Aggrieved over the inadequate compensation awarded, the claimants are before this Court.

3. The learned counsel appearing for the claimants submit that fixation of the income at Rs.6,000/- per month by the Tribunal is un-sustainable, when documentary evidence has been produced before the Tribunal to show that the deceased had been working as a mason. The learned counsel further submitted that the monthly income ought to have been taken at Rs.10,000/- per month.

4. Per contra, learned counsel appearing for the 2nd respondent submits that fixing the income at Rs.6,500/- based on the ratio laid down in the case of Syed Sadiq, etc., Vs. Divisional Manager, United India Insurance Co., Ltd., (2014 (1) TNMAC 459 (SC)) would be reasonable and any amount over and above the same, in the absence of direct documentary evidence is unsustainable.

5. A perusal of the order passed by the Tribunal reveals that the Tribunal, while calculating the loss of dependency, has taken the monthly income at Rs.6,000/- and deducting 1/3rd towards the personal expenses and applying the multiplier of 13, quantified the loss of dependency at Rs.6,24,000/-. The Tribunal has further awarded a sum of Rs.10,000/- towards loss of consortium, Rs.20,000/- towards loss of love and affection, Rs.10,000/- towards transport expenses and Rs.10,000/- towards funeral expenses, in all quantifying the total compensation at Rs.6,74,000/-.

6. Though it is the submission of the learned counsel for the appellant that the monthly income ought to have been fixed at Rs.10,000/-, however, as rightly contended by the learned counsel for the respondent, considering the nature of the employment and applying the ratio laid down in Syed Sadiq's case (supra), fixing the monthly income at Rs.6,500/- would be just and reasonable. Accordingly, this Court, while fixing the monthly income at Rs.6,500/=, adding 30% towards the future

prospective increase in income and deducting 1/3rd towards the personal expenses and adopting multiplier of 13, quantifies the loss of income to the family at Rs.8,78,904/= (Rs.5634 X 12 X 13).

7. Insofar as the compensation awarded under the heads loss of consortium and loss of love and affection are concerned, a perusal of the order reveals that the compensation awarded under those heads is very much on the lower side. The Tribunal ought to have considered the fact that the minor children, aged 15 and 17 have lost the support and guidance of their father at a very crucial point in their life. Though no amount of compensation can offset the loss suffered by the minor claimants, however, this Court is of the opinion that a sum of Rs.1,00,000/= to each minor claimant under the head love and affection would be a just and reasonable compensation. Similarly the 1st claimant has lost the companionship of her husband at a very young age of 36 and has been left alone to face the world. A just and reasonable compensation is necessary to mitigate the loss suffered by the 1st claimant. This Court is of the opinion that a sum of Rs.1,00,000/= would be a just and reasonable compensation under the head loss of consortium.

8. The compensation awarded towards funeral expenses and transport expenses are on the lower side. This Court, considering the totality of circumstances enhances the award amount to Rs.25,000/- each under the head transport expenses and funeral expenses. In all, this Court enhances the compensation payable to the claimants to Rs. Rs.11,13,748/- rounded off to Rs.11,13,800/-.

9. In the result, the Civil Miscellaneous Appeal is allowed, by enhancing the total amount of compensation from Rs.6,74,000/- to Rs.11,13,800/- which is payable with interest at 7.5% per annum from the date of petition till the date of deposit. No costs. Consequently, connected Miscellaneous petition is closed.

10. The second respondent / Insurance Company is directed to deposit the entire compensation, as determined by this Court above, amount along with interest at 7.5% p.a., from the date of petition till the date of deposit, together with costs as quantified 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 judgement. The claimants are entitled to share the compensation amount as per the ratio of apportionment made by the claims Tribunal with proportionate interest therefor. On such deposit being made, the Tribunal shall transfer the share of the major claimant to her bank accounts through RTGS within a period of

two weeks thereafter. Insofar as the share of the minor claimants are concerned, the same shall be kept in an interest bearing fixed deposit, in any one of the Nationalised banks till the minors attain majority. The interest accrued thereon shall be withdrawn by the mother of the minor claimants directly from the bank and shall be utilized for the welfare of the minors. Additional Court fee, if any due, on the enhanced compensation, shall be paid by the claimants before obtaining the copy of the judgement.

Sd/-
Assistant Registrar(CS-iv)

//True Copy//

Sub Assistant Registrar

kv/GLN

To

1.The Judge, Principal District
Judge Motor Accident Claims at Cuddalore.

C.M.A.No.2919 of 2017

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