IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2017

CORAM

THE HON'BLE MR. JUSTICE **S.MANIKUMAR**
and
THE HON'BLE MR. JUSTICE **M.GOVINDARAJ**

C.M.A. No.777 of 2017
C.M.P.No.4142 of 2017

M/s.ICICI Lombard General
Insurance Company Ltd.,
rep., by its Divisional Manager,
Divisional Office, Mumbai 400 002. .. Appellant

vs.

1. V.Bharathi
2. Swapna
3. Minor Thilak Raj
(Minor 3rd respondent is represented
by his mother, 1st respondent)

4. B.G.Somashekar

5. M/s.Namakkal Transport Carriers Pvt. Ltd.,
No.39 (Old No.18), Linghi Chetty Street,
1st Floor, Chennai.

6. The Branch Manager,
National India Assurance Co. Ltd.,
Branch Office,
No.45, 5th Floor, Moore Street,
Chennai. .. Respondents

Appeal against the fair and decretal order dated 27.04.2015, passed in M.C.O.P.No.821 of 2008, on the file of the Motor Accidents Claims Tribunal (Additional District Judge), Krishnagiri.

For Appellant .. Mrs.R.Sree Vidhya

For Respondents 1 & 2 .. Mr.V.Manisekaran

JUDGMENT

(Judgment of the Court was delivered by **S.MANIKUMAR, J.**)

In the accident, which occurred on 09.12.2007, husband of the 1st respondent, and father of respondents 2 and 3, aged 40 years, died. Legal representatives of the deceased, respondents/claimants have filed M.C.O.P.No.821 of 2008, on the file of the Motor Accident Claims Tribunal (Additional District Judge), Krishnagiri, claiming compensation of Rs.50,00,000/-, stating that at the time of accident, the deceased was a lorry owner-cum-driver, as well as, doing real estate business and earned Rs.40,000/- to Rs.50,000/- per month. Though the appellant-Insurance Company opposed the claim, both on negligence and quantum of compensation, on evaluation of pleadings and evidence, the Claims Tribunal, vide judgment and decree, dated

27.04.2015, awarded compensation of Rs.27,50,000/- with interest, at the rate of 7.5% per annum, from the date of claim, till realisation. Apportionment of the award amount is given hereunder:

Loss of dependency	:	Rs.25,20,000/-
Loss of love and affection	:	Rs. 1,50,000/- (Rs.50,000/- each)
Loss of consortium	:	Rs. 75,000/-
Funeral expenses	:	Rs. 5,000/-
Total	:	Rs.27,50,000/-

2. Being aggrieved by the same, ICICI Bank, Mumbai, has filed the instant appeal, on the grounds that, without any documentary evidence, the Tribunal has fixed a higher monthly income of Rs.21,000/-, for the purpose of contribution to the family. Quantum of compensation is also assailed, on the grounds that the Tribunal has applied '13' multiplier, when, as per the declaration of the legal representatives that at the time of accident, the deceased was aged 47 years. Except the above, no other submission has been made.

3. Mr.V.Manisekaran, learned counsel appearing for the respondents/claimants submitted that the Tribunal, on evaluation of the oral and documentary evidence, has deducted the expenses, towards, diesel charges, taxes, driver batta, cleaner batta and thus, determined the monthly income of Rs.21,000/-, for the purpose of computing loss of contribution to the family. He further submitted that, as per the entry in the Post-Mortem Certificate, the Tribunal has fixed the age of the deceased as 40 years and accordingly, applied '15' multiplier, for determining the loss of dependency. He also submitted that the award under the head, loss of consortium, requires consideration. He submitted that the well considered judgment of the Claims Tribunal, need not be interfered with.

Heard the learned counsel appearing for the parties and perused the materials available on record.

4. As rightly contended by the learned counsel appearing for the appellant, no document has been marked to prove that the deceased earned Rs.21,000/- per month, except the computation, on

the basis of the charges, stated supra. Considering the fact that the deceased was a owner-cum-driver, we deem it proper to determine the monthly income as Rs.15,000/-, for the purpose of computing the loss of contribution to the family.

5. As per the version of the respondents/claimants, in the application, filed under Section 166 of the Motor Vehicles Act, 1988, at the time of accident, the age of the deceased was 40 years. True that the claimants have made a declaration to the authority, who has issued the legal heir certificate. But, we would give credence to the declaration made to this Court, in the application. Age mentioned in Ex.P11 - Legal Heir Certificate, need not be taken, contrary to the declaration of the claimants. Information given at the time of admission of the patient by anybody, would be carry forward in Ex.P2 - Post-Mortem Certificate, and accordingly, the said certificate is issued. Entries in Post-Mortem Certificate, we carry forward in Ex.P3 - Death Certificate, issued by the Municipal authorities. Whereas, Ex.P11 - Legal Heir Certificate, is issued, only on the information given by the legal heirs. Therefore, as rightly contended by the

learned counsel for the appellant-Insurance Company, the Claims Tribunal has failed to apply '13' multiplier, on the basis of the declaration of the claimants, before the Tribunal and therefore, we are of the view that there is an error in application of multiplier.

6. However, as rightly contended by the learned counsel appearing for the respondents/claimants that the Tribunal has awarded Rs.75,000/- only, towards loss of consortium to the widow, aged 35 years. After the demise of the sole breadwinner, widow has to take care of the daughter, aged 19 years and minor son, aged 18 years. There is a loss of estate.

7. 'Consortium' as per the ***Best v. Samuel Fo***x reported in **1952 AC 716** means, "Duty owned by a wife to her husband and vice versa, companionship, love and affection, comfort, mutual services, sexual intercourse, etc." In **Rajesh and others v. Rajbir Singh and others** reported in **2013(3) CTC 883,** the Apex Court, held as follows:

> "In legal parlance, 'Consortium' is the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or

> her mate. That non-pecuniary head of damages has not been properly understood by our Courts. The loss of companionship, love, care and protection, etc., the spouse is entitled to get, has to be compensated appropriately. The concept of non-pecuniary damage for Loss of Consortium is one of the major heads of award of compensation in other parts of the world more particularly in the United States of America, Australia, etc. English Courts have also recognized the right of a spouse to get compensation even during the period of temporary disablement. By Loss of Consortium, the Courts have made an attempt to compensate the loss of spouse's affection, comfort, solace, companionship, society, assistance, protection, care and sexual relations during the future years. Unlike the compensation awarded in other countries and other jurisdictions, since the legal heirs are otherwise adequately compensated for the pecuniary loss, it would not be proper to award a major amount under this head. Hence, we are of the view that it would only be just and reasonable that the Courts award atleast Rupees one lakh for Loss of Consortium."

Following the same, a sum of Rs.1,00,000/- is awarded as loss of consortium.

8. Quantum of Compensation of Rs.5,000/- awarded under the head, funeral expenses, is less. On the aspect of quantum of compensation, under the head, funeral expenses, the Hon'ble Supreme Court in **Rajesh and others Vs. Rajbir Singh and others** reported in **2013(3) CTC 883**, held as follows:

> "21. We may also take judicial notice of the fact that the Tribunals have been quite frugal with regard to award of compensation under the head 'Funeral Expenses'. The 'Price Index', it is a fact has gone up in that regard also. The head 'Funeral Expenses' does not mean the fee paid in the crematorium or fee paid for the use of space in the cemetery. There are many other expenses in connection with funeral and, if the deceased is follower of any particular religion, there are several religious practices and conventions pursuant to death in a family. All those are quite expensive. Therefore, we are of the view that it will be just, fair and equitable, under the head of 'Funeral Expenses', in the absence of evidence to the contrary for higher expenses, to award at least an amount of Rs.25,000/-."

Following the said decision, we deem it fit to award Rs.25,000/- under the head, funeral expenses.

15. Legal representatives of the deceased, particularly, children have lost the love and affection of the deceased. In **Rajesh v. Rajbir Singh** reported in **2013 (2) TNMAC 55,** the Hon'ble Apex Court has awarded Rs.1,00,000/- each, to the legal representatives of the deceased, towards loss of love and affection. However, considering the age of the children, aged 19 and 18 years, this Court is inclined to award Rs.50,000/- each, totally Rs.1,00,000/-, towards loss of love and affection.

16. After re-working the compensation, the legal representatives of the deceased are entitled to Rs.22,53,000/- only, as apportioned hereunder:

Loss of dependency	:	Rs.25,20,000/-
Loss of love and affection	:	Rs. 1,50,000/- (Rs.50,000/- each)
Loss of consortium	:	Rs. 75,000/-
Funeral expenses	:	Rs. 5,000/-
Total	:	Rs.27,50,000/-

17. In the result, the Civil Miscellaneous Appeal is disposed of, with a reduction of Rs.4,97,000/-. The appellant-Insurance Company is directed to deposit the amount determined by this Court, with accrued interest and costs, to the credit of M.C.O.P.No.821 of 2008, on the file of the Motor Accidents Claims Tribunal (Additional District Judge), Krishnagiri, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the respondents are permitted to withdraw the same, by making necessary applications before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is also closed.

(S.M.K., J.) (M.G.R., J.)
02.03.2017

Index: Yes/No
Internet: Yes/No

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To

The Motor Accidents Claims Tribunal
(Additional District Judge), Krishnagiri.

S. MANIKUMAR, J.
AND
M.GOVINDARAJ, J.
skm

C.M.A.No.777 of 2017

02.03.2017