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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.10.2017

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

CMA(MD)No.61 of 2016
and
CMP(MD)No.1187 of 2016

The Oriental Insurance Company Limited,
through its Divisional Manager,
North Veli Street, Madurai District. :Appellant/3rd Respondent

Vs.

1.D.Nalayini Devi
2.D.Priyadharshini
3.D.Arunpandian : R1 to R3/Petitioners 1 to 3
[R3 declared as major and the guardianship discharged
vide order, dated 26.10.2017
made in CMP(MD)No.9569/2017
in CMA(MD)No.61 of 2016]

4.S.Kannan : 4th Respondent/1st Respondent
5.N.Sethuramu
6.The New India Assurance Company Limited,
Rep. By its Branch Manager,
Door No.161-A, Keela Veli Veethi,
Madurai District. : R5 and R6/R2 and R4

Prayer: Civil Miscellaneous Petition filed under section 173 of the Motor Vehicles Act 1988, against the award made in MCOP No.1365 of 2009, dated 20.04.2015 on the file of the Motor Accident Claims Tribunal-cum-VI Additional District Judge, Madurai.

For Appellant	:	Mr.K.Bhaskaran
For R1 to R3	:	Mr.R.Janakiramulu
For R4 and R5	:	No appearance
For 6th Respondent	:	Mr.R.Suresh Kumar

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J U D G M E N T

(Judgment of this court was made by K.KALYANASUNDARAM,J)

This appeal is directed against the award passed by the Motor Accident Claims Tribunal (6th Additional District Judge), Madurai, in MCOP No.1365 of 2009, dated 20.04.2015.

2.The wife and the children of the deceased Dhanapandi approached the tribunal claiming compensation of Rs.70,00,000/- on the ground that the deceased died due to the negligence of the driver of the mini bus bearing registration No.TN-59-AC-6768, owned by the 2nd respondent and insured with the appellant Insurance Company.

3.The case of the claimants is that on 31.07.2006, the deceased Dhanapandi was riding his Bajaj Boxer motor cycle bearing registration No.TN-65-A-8262 on Melur Main Road near Uthangudi and at that time, a mini bus bearing registration No.TN-59-AC-6768 came in a high speed and hit against the deceased. It is further stated that the deceased was working as Branch Manager in the State Bank of India, Othakadi Branch and he was drawing a sum of Rs. 24,366/- per month at the time of accident.

4.The appellant Insurance Company filed a counter contending that the accident did not occur as alleged by the claimants and the unfortunate incident had taken place in a short distance after the mini bus started from the bus stop. They have also disputed the age, income and entitlement of the claim.

5.The insurer of the motor cycle filed a counter stating that the accident had taken place due to the negligence of the driver of the mini bus.

6.The claimants have examined three witnesses as PW1 to PW3 and marked Exs.P1 to P12. On the side of the Insurance company, RW1 and RW2 were examined and Exs.R1 and R2 were marked.

7.Heard the rival submissions made on either side and perused the materials available on record.

8.The first claimant, who is the wife of the deceased examined herself as PW1. Ex.P1 First Information Report and Ex.P2 final report would show that a criminal case was proceeded against the driver of the mini bus and he also pleaded guilty and paid the fine amount before the Judicial Magistrate No.1, Melur, in C.C.No.41 of 2007. PW3 Seeman was examined as an eye witness and in his evidence,

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he has supported the case of the claimants. Ex.R2 is the report of the Motor Vehicle Inspector and the evidence of RW2 reveal that there was no mechanical defect in the offending vehicle. The tribunal, based on the evidence, came to the conclusion that the accident was due to the negligence of the driver of the mini bus.

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9.As regards quantum of compensation, PW1 has deposed that her husband Dhanapandi was working as Branch Manager in the State Bank of India, Othakadai Branch and his monthly salary was Rs.24,366/- per month as evident from Exs.P7 and P9 salary certificates. PW2 is a Branch Manager of State Bank of India and the salary certificates were marked through him. Ex.P11 Salary Certificate of the deceased shows that he will attain the age of superannuation on 31.08.2018 and in the month of August 2013, he was drawing a gross salary of Rs.55,641/-.

10.The tribunal, while calculating the loss of dependency, based on Ex.P9 salary certificate, fixed the income of the deceased as Rs.24,367/- and added 30% towards future prospectus, based on the decision of the Hon'ble Apex Court in the case of Sarla Verma (2009)2 TN MAC 1 and taken the income as Rs.31,676/-. After deducting 1/3rd therefrom for the personal expenses, Rs.21,118/- was contribution to his family. The tribunal, by adopting multiplier of 13, calculated the loss of dependency at Rs.32,94,408/- (Rs.21,118/- x 12 x 13) and after adding conventional damages, the tribunal has awarded a sum of Rs.34,71,908/-.

11.The Insurance Company has preferred this appeal challenging the quantum and the decision on the nature of the accident and on negligence are not questioned in this appeal.

12.Mr.K.Bhaskaran, learned counsel for the appellant would submit that the award of the tribunal is excessive and exorbitant. Further, the tribunal has failed to deduct income tax, while passing award by relying on the decision of the Hon'ble Supreme Court reported in (2010)12 SCC 378 (Shyamwati Sharma and others vs. Karam Singh and another), 2014(1)TN MAC 355 (DB) (C.B.Shankar vs. MD, Metropolitan Transport Corpn. Ltd.), 2011(2) TN MAC 313 (SCC) (Ranjana Prakash & others Vs. Divisional Manager) and 2017(1) TN MAC 681 (DB) (New India Assurance Co. Ltd., vs. K.Rathamani)

13.Per contra, Mr.R.Janakiramulu, learned counsel for the respondents 1 and 2/claimants would urge that the award of the tribunal is reasonable and there cannot be any standard deduction in view of the Division Bench judgment of the court in II (2017)ACC 240 (DB) (Mad.) [Metropolitan Transport Corporation Ltd., vs. E.Mahedra Selvi & others].

14.In the case on hand, the deceased was employed in the State Bank of India, Othakadai Branch and he was receiving a salary of Rs.24,336/- per month and he died at the age of 48 years are not in dispute. The tribunal, has rightly added 30% taking into

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consideration the age of the deceased for future prospectus. The amount awarded under the head of conventional damages are reasonable and they are confirmed. But the tribunal has failed to deduct any amount towards income tax.

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15.It is settled law that while awarding compensation, necessary deductions have to be made depending upon the salary. 30% deduction towards income tax was approved by the Hon'ble Apex Court in the decisions reported in (2010)12 SCC 378 [Shyamwati Sharma and others vs. Karam Singh and others] and 2011(2) TN MAC 313 (SC). The Division Bench of this court in the judgments in 2014(1) TN MAC 355 (DB) [C.B.Shankar vs. MD. Metropolitan Transport Corporation Limited] and 2017(1) TN MAC 681 (DB) [New India Assurance Company Limited vs. K.Rathamani, applied 20% deduction towards Income Tax. In the judgment cited by the learned counsel for the respondents, for the gross income of Rs.11,46,720/-, the court deducted Rs.2,55,456/-.

16.Keeping in mind the decisions of the Hon'ble Apex Court and the judgments of this court, it would be appropriate to deduct 20% towards income tax. After deducting income tax, the claimants would be entitled for Rs.27,98,798/- with interest @ 7.5% p.a., as calculated hereunder:-

Head	Amount
Income	Rs. 31,676-00
Annual Income (31,676 x 12)	Rs. 3,80,112-00
Professional Tax (Less)	Rs. 2,400-00
	Rs. 3,77,712-00
20% Income Tax (Less)	Rs. 75,542-00
Total Income per annum	Rs. 3,02,170-00
Personal expenses 1/3rd deducted [Rs.3,02,170/- x 2/3]	Rs. 2,01,4446-00
Multiplier '13' Loss of Income [Rs.2,01,446 x 13]	Rs. 26,18,798-00
Loss of consortium	Rs. 50,000-00
Love and Affection	Rs. 1,00,000-00
Funeral Expenses	Rs. 25,000-00
Transport	Rs. 5,000-00
Total	Rs. 27,98,798/-

17.In the result, the appeal is partly allowed. The award of Rs.34,71,908/- is reduced to Rs.27,98,798/-. The appellant shall deposit the modified awarded amount, within a period of eight weeks, less already deposited. On such compliance, the claimants are

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entitled to withdraw the entire amount. If any excess amount is lying to the credit of the claim petition, the same shall be returned to the appellant. No costs. Consequently connected Miscellaneous Petitions is closed.

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Sd/-
Assistant Registrar(Crl.Side)

/True Copy/

Sub-Assistant Registrar

To,

1.The VI Additional District Judge/Motor Accident Claims Tribunal,
Madurai.

2.The Section Officer, V.R. Section, (2 copies)
Madurai Bench of Madras High Court,
Madurai.

+2ccs to M/s.K.Bhaskaran, Advocate, SR.No.84112

+One cc to Mr.R.Suresh Kumar, Advocate, SR.No.84153

er
RL/7C/5P/JC/SAR2/13/3/2018

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