BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 21.11.2017

CORAM

THE HONOURABLE MR.JUSTICE **K.KALYANASUNDARAM**
AND
THE HONOURABLE MRS.JUSTICE **V.BHAVANI SUBBAROYAN**

C.M.A(MD)No.550 of 2015
and
M.P(MD)No.1 of 2015

The New India Assurance Company Ltd.,
rep. by through its
Divisional Manager,
No.242B, Kamarar Salai,
Madurai District. : Appellant/2nd Respondent

Vs.

1.G.Packiya Lakshmi :1st Respondent/Petitioner

2.V.Krishnan : 2nd Respondent/1st Respondent

3.A.Gunasekaran :3rd Respondent/3rd Respondent

Prayer : Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the award and decree dated 14.10.2014 made in MCOP No.1038 of 2010 on the file of the Motor Accident Claims Tribunal (VI Additional District Court), Madurai.

For Appellant : Mr.B.Vijay Karthikeyan

For Respondent : Mr.K.Murugan for R1
No appearance for R2 & R3

J U D G M E N T

[Judgment of the Court was delivered by **K.KALYANASUNDARAM, J]**

The Insurance Company has preferred this appeal challenging the quantum of the award passed by the Motor Accident Claims Tribunal, (VI Additional District Court), Madurai in MCOP No.1038 of 2010 dated 14.10.2014.

2.The brief facts of the case are that on 13.03.2006, when the deceased was travelling as a pillion rider in TVS Scooty belonging to her husband, an Auto bearing registration No. TN 58 D 4453, which was driven in a rash and negligent manner, hit against the motorcycle. Due to the impact, the deceased sustained injuries all over the body and she was taken to Government Hospital, where she was declared as brought dead. The Tallakulam Police have registered a case in crime No.64 of 2006 against the driver of the offending Auto. The claimant is the daughter of the deceased and she filed the petition before the Tribunal seeking compensation of Rs.25,00,000/- on the ground that the driver of the auto was responsible for the accident.

3.The appellant Insurance Company resisted the claim petition denying the entire allegations made in the claim petition.

4.Before the Tribunal, the claimant has examined three witnesses and marked Exs.P.1 to P.6. On the side of the appellant Insurance Company, three witnesses were examined and Exs.R1 to R9 were marked. The Tribunal, after considering the oral and documentary evidence adduced by the parties, came to the conclusion that the driver of the offending vehicle was responsible for the accident and awarded compensation of Rs.32,75,100/- with interest at the rate of 7.5% per annum.

5.Mr.B.Vijay Karthikeyan, learned counsel appearing for the appellant contended that the Tribunal has erroneously taken the monthly income of the deceased as Rs.17,470/- and applied multiplier "15" to calculate the compensation. He would further submit that the Tribunal erroneously has taken 50% of the salary as future prospects, therefore, it has to be reduced.

6.Mr.K.Murugesan, learned counsel appearing for the first respondent/claimant submitted that the Tribunal has rightly fixed the monthly income and the future prospects and award under other heads are very reasonable.

7.We have heard the parties and perused the materials available on records.

8.It is not in dispute that at the time of accident, the deceased was working as Pharmacist at Primary Health Centre at Valayankulam. Perusal of Ex.X1, salary receipt reveals that after deductions, the deceased was paid Rs.14,865/-. The case of the claimant is that if the deceased is alive, as per 6th pay commission, the deceased's salary would be Rs.20,220/- in 2014 and when the deceased retires from service, her salary would be Rs.27,230/-. But we do not find force in the contention. It is settled law that the loss of income shall be determined from the salary received by the deceased on the date of accident. So it is appropriate to fix the monthly income of the deceased as Rs.15,000/- and after adding 30% of the salary towards future prospects and after deducting 1/3 towards her personal expenses, the monthly loss of contribution to the family is Rs.13,000/-

[15000 x 30% - 1/3]. By applying multiplier '15', this Court awards Rs.23,40,000/- [13000 x 12 x 15] towards loss of income.

9. Taking note of the facts of this case, it is appropriate to modify the amount awarded under conventional damages. Rs.1,00,000/- awarded by the Tribunal towards loss of love and affection is reduced to Rs.60,000/-; Rs.25,000/- awarded by the Tribunal for funeral expenses is reduced to Rs.15,000/-; Rs.5000/- towards transportation awarded by the Tribunal is increased to Rs.15,000/-. Further, this Court awards Rs.15,000/- towards loss of estate and Rs.500/- awarded by the Tribunal under the head of loss of amenities is set aside. In total, the claimant is entitled to Rs.24,45,000/- with interest @ 7.5% per annum.

10.In the result, the appeal is partly allowed. The award amount of Rs.32,75,100/- is modified to Rs.24,45,000/-. The appellant Insurance Company is directed to deposit the modified award amount with accrued interest and costs, within a period of eight weeks from the date of receipt of a copy of this order, less already deposited. On such compliance, the claimant is permitted to withdraw the same, less already withdrawn, if any. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To

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

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

+ 1 cc TO Mr.B.Vijay Karhikeyan , Advocate in SR No. 88439

skn/er
AE/KKR/SAR2/21.02.2018/5P/5C

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