IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.08.2018

CORAM

THE HON'BLE MR. JUSTICE K.K.SASIDHARAN
and
THE HON'BLE MR. JUSTICE R.SUBRAMANIAN

C.M.A.No.1250 of 2018

1.Myilsamy
2.Subbulakshmi ..Appellants/Petitioners

Vs.

1.Syed Ismail Ashraf

2.M/s.Sharma Transports,
No.328, Sangeetha Bhavan,
TSP Road, Bangalore,
Kalasipalayam,
Bangalore - 560 002.

3.ICICI Lombard General Insurance
Company Limited,
ICICI Lombard House 414,
Veer Savarkar Marg,
Siddhi Vinayak Temple,
Prabhadevi, Mumbai - 400 025. ..Respondents/Respondents

Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 09.08.2017 in M.A.C.T.O.P.No.699 of 2013 on the file of the Motor Accidents Claims Tribunal (I Additional District Judge), Tiruppur.

For Appellants .. Mr.F.Terry Chellaraja
For Respondents .. Ms.R.Sreevidhya for R3
Mr.S.P.Yuvaraj for R2

JUDGMENT

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

The parents of the deceased are the claimants. They claimed a sum of Rs.90 lakhs as compensation for the death of their son, who was aged about 25 years on the date of the accident. The income tax returns for the years 2011-12 and 2012-13 were filed to show the income of the deceased. The Tribunal fixed the monthly income of the deceased at Rs.10,000/-. Adding 50% for future prospects, the annual income was arrived at Rs.1,80,000/-. 50% of the amount was deducted towards his personal expenses and the annual pecuniary loss was arrived at Rs.90,000/-. Applying multiplier of 18, the Tribunal arrived at the pecuniary loss of Rs.16,20,000/-. The Tribunal awarded Rs.25,000/- for loss of love and affection, Rs.10,000/- for funeral expenses, Rs.10,000/- for transportation and thus a total award is made for Rs.16,65,000/-. Aggrieved claimants are on appeal, seeking enhancement.

2.We have heard Mr.F.Terry Chellaraja, learned counsel appearing for the appellants and Ms.R.Sreevidhya, learned counsel appearing for the third respondent insurance company. Mr.S.P.Yuvaraj, learned counsel appears for the second respondent/owner of the vehicle.

3.Mr.F.Terry Chellaraja, learned counsel appearing for the appellants would contend that despite production of the income tax returns, the Tribunal was not justified in taking the monthly income at Rs.10,000/-.

4.Ms.R.Sreevidhya, learned counsel appearing for the third respondent insurance company would submit that the income tax returns for the relevant years show different income and hence the same need not be taken into account and thus the Tribunal is justified in fixing the monthly income at Rs.10,000/-.

5.We have considered the rival submissions.

6.Considering the fact that the income tax return for the assessment year 2012-13 was filed only for 270 days, we are of the opinion that the average income for the two years viz., 2011-2012 and 2012-13 could be taken as income of the deceased. Thus, the average annual income of the deceased is worked out at Rs.2,34,000/-. The age of the deceased was 25 years at the time of accident. Therefore, 40% of the income is to be added towards future prospects since the deceased was the self employed person. The annual income of the deceased thus works out to Rs.3,27,600/. The deceased being a bachelor, 50% of the income is deducted towards his personal expenses. Therefore, the annual pecuniary loss would be Rs.1,63,800/-. Applying multiplier of 18, the total pecuniary loss is arrived at Rs.29,48,400/-. The Tribunal has awarded only Rs.25,000/- towards loss of love and affection. The same is enhanced to Rs.50,000/- at Rs.25,000/- for each claimant. The Tribunal has awarded Rs.10,000/- for funeral expenses and Rs.10,000/- for transportation. The said awards are sustained. A sum of Rs.15,000/- is awarded towards loss of estate. Thus, the claimants would be entitled for Rs.30,33,400/-, which is rounded off to Rs.30,34,000/- with interest at 7.5% per annum from the date of petition till the date of deposit.

7.The award of the Tribunal is modified as above by granting a sum of Rs.30,34,000/- with 7.5% interest and proportionate costs. The award amount has to be apportioned amongst the claimants as follows:

The mother viz., the second appellant is entitled to Rs.20 lakhs and the father viz., the first appellant is entitled to Rs.10,34,000/- with proportionate interest and costs.

8.The insurance company shall deposit the remaining amount within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the claimants are entitled to withdraw their respective shares with proportionate interest and costs.

9.In fine, the Civil Miscellaneous Appeal is partly allowed. No costs.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

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To
1.The I Additional District Judge,
(Motor Accidents Claims Tribunal),
Tiruppur.

+1 CC to Mr.S.P.Yuvaraj, Advocate sr 58548.
+1 CC to Ms.M. Malar, Advocate sr 58937.
+1 CC to M/s.R. Sreevidya, Advocate sr 59391.

C.M.A.No.1250 of 2018

RGN(CO)
SP(11/01/2019)