IN THE JUDICATE OF MADRAS HIGH COURT

Reserved on : 23.02.2018

Delivered on : 16.04.2018

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THE HON'BLE MR.JUSTICE R.SUBBIAH
and
THE HON'BLE MR.JUSTICE P.D.AUDIKESAVALU

C.M.A.Nos.107 & 200 of 2014
and
M.P.No.1 of 2014 in C.M.A.No.107 of 2014

C.M.A.No.107 of 2014

M/s.United India Insurance Co.Ltd.,
having Office at D.No.280,
Ooty Main Road, Mettupalayam,
Coimbatore-641 301.
Regional Office at
No.178, Dr.Nanjappa Road,
3rd Floor, Coimbatore-641 018. ... Appellant/Respondent III

Vs.

1.Smt.M.Renuka
2.Miss.Krithika
3.Miss.Sindhu
4.Thiru.M.Shahul Hammed
....Respondent 1to3 petitioner 1to3
Respondent 4/Respondent I

5.M/s.S.K.Engineering,
having office at D.No.21,
New Line, M.M.A.Market,
South Ukkadam,
Coimbatore-641 001. ... Respondent V/Respondent II

C.M.A.No.200 of 2014

1.M.Renuka
2.R.Krithika
3.M.Sindhu ... Appellants/Petitioners

Vs.

1.M.Shahul Hameed

2.M/s.S.K.Engineering,
having office at D.No.21,
New Line, M.M.A.Market,
South Ukkadam,
Coimbatore-641 001.

3.The United India Insurance Co.Ltd.,
having its Office at D.No.280,
Ooty Main Road, Mettupalayam,
Coimbatore-641 301.
having its Regional Office at
No.178, Dr.Nanjappa Road,
3rd Floor, Coimbatore-641 018.
... Respondents/Respondents

Prayer: Civil Miscellaneous Appeals have been filed under Section 173 of Motor Vehicles Act 1988 against the judgment and decree dated 28.02.2013 in M.C.O.P.No.788 of 2011 passed by the Motor Accident Claims Tribunal(IV Additional District Judge) at Coimbatore.

Appearance_
Mr.J.Chandran, for appellant in C.M.A.No.107/2014
and for R3 in C.M.A.No.200/2014

Mr.Ma.P.Thangavel, for appellant in C.M.A.No.200/2014
and for R1 to R3 in C.M.A.No.107/2014

JUDGMENT

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

Challenging the quantum of compensation awarded by the Motor Accident Claims Tribunal (IV Additional District Judge) at Coimbatore, in and by award dated 28.02.2013 in M.C.O.P.No.788 of 2011, the Insurance Company has filed the appeal in C.M.A.No.107 of 2014.

2.On the other hand, not being satisfied with the quantum of compensation awarded by the Tribunal, the claimants have filed the appeal in C.M.A.No.200 of 2014.

3.Since both the appeals arise out of the same award, these appeal are disposed of by way of this common judgment. For the sake of convenience, the parties will hereinafter be referred to as per their rankings in the claim petition.

4.The claimants are wife and daughters of the deceased K.Moorthy. It is the case of the claimants that on 07.11.2010 at about 11.40 am, while the said Moorthy was riding his two wheeler (Moped) bearing Reg.TN-37-BC-4065 from West to East direction on Combatore-Avinashi Main Road in Coimbatore, another motorcycle bearing Reg.No.TN-66-B-8352 came in a rash and negligent manner from behind and hit the rear side of the Moped, as a result of which the said Moorthy lost his balance, fell down and sustained head injury and other multiple injuries. Immediately, he was admitted in PSG Hospital at Coimbatore, where he underwent treatment from 07.11.2010 to 03.12.2010. Thereafter, he was taken to Government Hospital at Coimbatore on 03.12.2010 and he was admitted there as an inpatient. But, inspite of the treatment given to him, he succumbed to his injuries on 26.12.2010. Hence, the claimants have made a claim for compensation. With regard to the quantum of compensation, it is the case of the claimants that the deceased Moorthy was aged 47 years at the time of accident and he was working as a Supervisor in Sridevi Textiles in Crosscut Road at Coimbatore. He was earning a sum of Rs.12,000/- per month. Hence, the claimants have made a claim for a sum of Rs.23 lakhs as compensation as against the owner of the offending two-wheeler and its insurer.

5.The case of the claimants was resisted by the Insurance Company before the Tribunal by filing a detailed counter, denying the averments made by the claimants in the claim petition.

6.Before the Tribunal, in order to prove their case, on the side of the claimants, the 1st claimant/wife examined herself as P.W.1 besides examining three other witnesses as P.W.2 to P.W.4 and marked 26 documents as Ex.P.1 to Ex.P.26. On the side of the Insurance Company, one witness was examined as R.W.1, but no documentary evidence was adduced.

7.The Tribunal, after analysing the entire evidence, has come to the conclusion that the accident was the result of the rash and negligent riding of the motorcycle bearing Reg.No.TN-66-B-8352 owned by the 2nd respondent and insured with the United India Insurance Company. By coming to such a conclusion, the Tribunal made the calculation under different heads and passed and award for a total compensation of Rs.22 lakhs. The break up details of the compensation amount award by the Tribunal are as follows_

Loss of Income	=Rs.16,78,073/-
Medical expenses	=Rs. 4,94,000/-

Funeral Expenses	=Rs.	5,000/-
Transportation	=Rs.	2,000/-
Loss of love and affection	=Rs.	15,000/-
Loss of consortium	=Rs.	5,000/-
Total	=Rs.21,99,073/-	

Aggrieved over the award passed by the Tribunal, the Insurance Company has filed the appeal (C.M.A.No.107 of 2013) stating that the sum of Rs.16,78,073/- awarded under the head of loss of income is highly excessive. Similarly, not being satisfied with the quantum of compensation, the claimants have filed the appeal (C.M.A.No.200 of 2013) seeking enhancement of the compensation amount.

8.The learned counsel for the Insurance Company submitted that it is the case of the claimants that the deceased Moorthy was working as Supervisor in Sridevi Textiles and earning an income of Rs.12,000/- per month. But, no tangible evidence was produced on the side of the claimants to establish that the deceased Moorthy was earning a sum of Rs.12,000/- per month. On the other hand, the statement of the Savings Bank Account from the Karur Vysya Bank, which was marked as Ex.P.24, would show that the deceased Moorthy was receiving a monthly income of Rs.7,010/-. But, the Tribunal, without considering this aspect properly, has fixed the sum of Rs.12,867/- as monthly income of the deceased. That apart, the Tribunal has added another sum of Rs.40,000/- towards annual bonus said to have been received by the deceased. In this regard, the learned counsel for the Insurance Company submitted that no evidence was produced on the side of the claimants to show that the deceased Moorthy was receiving a sum of Rs.40,000/- as annual bonus every year. Under such circumstance, the Tribunal ought not to have taken into consideration the said sum while calculating the compensation under the head of loss of income. Thus, the learned counsel for the Insurance Company submitted that by fixing a sum of Rs.7,000/- as monthly income, the compensation amount has to be recalculated.

9.Per contra, the learned counsel appearing for the claimants submitted that in order to prove the income earned by the deceased Moorthy, on the side of the claimants, the Manager of the Sridevi Textiles was examined as P.W.4, who had categorically stated in his evidence that the deceased Moorthy was working in his concern from 01.12.2004 to 06.11.2010 and he met with an accident on 07.11.2010. P.W.4 has further stated in his evidence that the deceased Moorthy was receiving a sum of Rs.12,850/- as monthly salary, after deduction of Rs.167 for ESI and Rs.840/- for PF. All together, the deceased Moorthy was earning a sum of Rs.13,540/- per month. Under such circumstance, the Tribunal ought to have taken a sum of Rs.13,540/- as monthly income of the deceased to make the calculation for compensation under the head of loss of income. But, the Tribunal has taken only a sum of Rs.12,867/- as monthly income of the deceased, which has resulted in awarding an inadequate compensation under the head of loss of income. Thus, the learned counsel for the claimants prayed that by fixing a sum of Rs.13,540/- as monthly income of the deceased, recalculation could be made to arrive at a just and proper compensation. That apart, it is further prayed by the learned counsel for the claimants that the compensation amounts awarded by the Tribunal under other heads are also on the lower side, hence, the same need proper enhancement.

10.Keeping the submissions made on either side, We have carefully gone through the entire materials available on record.

11.It is the main contention of the learned counsel for the Insurance Company that the Tribunal while calculating the compensation amount has fixed a sum of Rs.12,687/- as monthly income, whereas the statement of the Saving Bank Account issued by the Karur Vysya Bank (marked as Ex.P.24) would show that only a sum of Rs.7,010/- was deposited periodically in the SB A/c of the deceased Moorthy. Under such circumstance, the Tribunal ought to have taken only a sum of Rs.7,010/- as monthly income of the deceased. Further, the Tribunal has also added Rs.40,000/- towards annual bonus of the deceased. In this regard, the learned counsel for the Insurance Company submitted that in the absence of any evidence to show the the deceased was receiving bonus sum of Rs.40,000/- every year, the said amount ought not to have been added by the Tribunal while calculating the compensation under the head of loss of income.

12.But, a perusal of the materials available on record, particularly Ex.P.24 (statement of SB Account), We find that during the year 2010, in the month of April, a sum of Rs.9,140/- was credited to the account of the deceased, in the month of May, sum of Rs.7,010/-, in the month of June sum of Rs.10,600/- was credited, in the month of July sum of Rs.8,940/- was credited and in the month of August, a sum of Rs.12,210/- was credited. Therefore, it is clear that different amounts were credited to the SB Account of the deceased Moorthy. Therefore, it is incorrect to state that the sum of Rs.7,010/- was uniformly deposited in the account of the deceased by his employer. Further, from a perusal of Ex.P.21, Salary Certificate issued by the employer of the deceased, it could be seen that the deceased was receiving a sum of Rs.12,850/- as monthly salary, after deduction of Rs.167 for ESI and Rs.840/- for PF. That apart, the Manager of the company, in which the deceased was working, was also examined as P.W.4, who had also categorically stated in his evidence that the victim was receiving a sum of Rs.13,540/-, out of which a sum of Rs.167/- toward ESI and Rs.840/- towards PF were deducted. The details of the salary received by the deceased are as follows_

Salary details		Deductions	
Basic	7000	PF	840
DA	1300	ESI	167
HRA	1200		
others	3367		
Gross	12867		

Thus, totally a sum of Rs.13,540/- was received by the deceased as monthly salary. Ex.P.21 was strongly corroborated in the evidence of P.W.4. Hence, We are of the opinion that at the time of accident, the deceased was receiving a sum of Rs.13,540/-, as contended by the claimants. In fact, no favourable reply to the case of the insurance company was brought out in the cross-examination of P.W.4. Hence, by placing reliance on the evidence of P.W.4 and Ex.P.21 & Ex.p.25, the monthly income of the deceased could be safely fixed at Rs.13,540/-. With regard to the addition of Rs.40,000/- towards annual bonus, We are of the opinion that as contended by the learned counsel for the Insurance Company, in the absence of any evidence to show that the deceased was receiving the said amount every year as bonus, the said amount is not liable to be added along with the income. Therefore, We are inclined to make the calculation by taking the sum of Rs.13,540/- as monthly income as observed above.

13.If the sum of Rs.13,540/- is taken as monthly income and 30% amount is added towards future prospects, then the total income works out to Rs.17,602/- (13,540 + 4,062). The annual income of the deceased works out to Rs.2,11,224/-. Since the dependants are three in number, 1/3rd amount has to be deducted towards the personal expenses. If so deducted, the annual contribution to the family works out to Rs.1,40,816/- (2,11,224 - 70,408). Since the deceased Moorthy was aged 47 years at the time of accident, the correct multiplier that has to be applied in this case is 13. If the multiplier 13 is applied, then the total loss of income works to Rs.18,30,608/- (1,40,816 x 13), which would be the just and proper compensation for the loss of income. Consequently, the sum of Rs.16,78,073/- awarded by the Tribunal under the head of loss of income is hereby modified and enhanced to Rs.18,30,608/-.

14.That apart, it is seen that the Tribunal has awarded only a sum of Rs.5,000/- for the loss of consortium to the 1st claimant/wife. As per the recent decision of the Hon'ble Supreme Court reported in 2017 SCC OnLine SC 1270 [National Insurance Company Ltd., Vs. Pranay Sethi and others], the wife of the deceased person is entitled to a sum of Rs.40,000/- for loss of consortium. Hence, the sum of Rs.5,000/- awarded by the Tribunal for loss of consortium is hereby enhanced to Rs.40,000/-. Further, for the loss of love and affection to the daughters of the deceased, the Tribunal has awarded only a meagre sum of Rs.15,000/-, hence, the same is enhanced to Rs.1,00,000/- at the rate of Rs.50,000/- each. The Tribunal has awarded only a sum of Rs.2,000/- for transportation and a sum of Rs.5,000/- for funeral expenses, which are on the lower side. Considering the present day cost of living, the sum of Rs.2,000/- awarded by the Tribunal for transportation is hereby enhanced to Rs.10,000/- and the sum of Rs.5,000/- awarded by the Tribunal for funeral expenses is hereby enhanced to Rs.15,000/-. Further, it is seen that the Tribunal has not awarded any amount for loss of estate. Hence, a sum of Rs.12,000/- is hereby awarded for loss of estate. The sum of Rs.4,94,000/- awarded by the Tribunal for medical expenses is supported by the medical bills, hence, the same is hereby confirmed. Consequently, the total compensation amount of Rs.21,99,073/- awarded by the Tribunal is hereby modified and enhanced to Rs. 25,00,608/- (rounded off to Rs.25 lakhs). The break up details of the modified/enhanced compensation amount are as follows_

Loss of Income	=Rs.18,30,608/-
Medical expenses	=Rs. 4,94,000/-
Funeral Expenses	=Rs. 15,000/-
Transportation	=Rs. 10,000/-
Loss of estate	=Rs. 11,000/-
Loss of love and affection	=Rs. 1,00,000/-
Loss of consortium	=Rs. 40,000/-
Total	=Rs.25,00,608/-(rounded off to Rs.25,00,000/-)

15.In the result, the appeal filed by the Insurance Company in C.M.A.No.107 of 2014 is dismissed and the appeal filed by the claimants in C.M.A.No.200 of 2014 is partly allowed. The compensation amount of Rs.21,99,073/- awarded by the Tribunal is hereby modified and enhanced to Rs.25,00,000/-, in which the 1st claimant is entitled to Rs.15 lakhs and the claimants 2 & 3 are entitled to Rs.5 lakhs each. The Insurance Company is directed to deposit the entire compensation amount of Rs.25 lakhs with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, within a period of six weeks from the date of receipt of a copy of this order. On such deposit being made, the claimants are entitled to withdraw their respective share amounts with proportionate interest accrued thereon, by making necessary application before the Tribunal.

Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

ssv

To,
The Motor Accident Claims Tribunal
(IV Additional District Judge) at Coimbatore.

+1cc to Mr.J.Chandran, Advocate, S.R.No.28502
+1cc to Mr.MA.P.Thangavel, Advocate, S.R.No.28359

C.M.A.Nos.107 & 200 of 2014
and
M.P.No.1 of 2014

MR(CO)
GSP(08/06/2018)