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.1395 of 2018

1.A.Prashanthi
2.V.Vishal (minor)
3.V.Nithika (minor)

minor petitioners 2 and 3 rep. by
their mother and next friend
A.Prashanthi .. Appellants/ petitioners

Vs.

1.The Commissioner,
Corporation of Chennai,
Rippon Building,
Chennai - 3.

2.United India Insurance Co. Ltd.,
No.134, Greams Road,
Chennai - 6. ../ Respondents Respondents

Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 22.09.2016 in M.A.C.T.O.P.No.564 of 2013 on the file of the Motor Accidents Claims Tribunal (II Judge, Court of Small Causes), Chennai.

For Appellants .. Mr.F.Terry Chellaraja

For Respondents .. Mr.Michael Visuvasam for R2

JUDGMENT

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

The claimants, who sought for compensation of Rs.1,50,00,000/- for the death of the husband of the first claimant and father of claimants 2 and 3 - V.Lakshminarayanan in a motor accident that occurred on 12.11.2012 are the appellants.

2.The claimants have claimed that the income of the deceased was Rs.50,000/- per month. The loss of dependency was worked out on the said basis. The Tribunal, considering the discrepancy between Form 16 and salary certificate issued by the employer, fixed the monthly income at Rs.30,000/-, added 30% towards future prospects, deducted 1/3rd amount towards personal expenses, applied multiplier of 14 and arrived at pecuniary loss of Rs.43,68,200/-. A sum of Rs.1,00,000/- was granted towards loss of consortium to the first claimant. A sum of Rs.2,00,000/- was granted towards loss of love and affection to claimants 2 and 3 together. A sum of Rs.50,000/- was awarded towards loss of estate and Rs.25,000/- was awarded towards funeral expenses. Thus, the Tribunal awarded a sum of Rs.47,43,000/- as total compensation.

3.We have heard Mr.F.Terry Chellaraja, learned counsel appearing for the appellants and Mr.Michael Visuvasam, learned counsel appearing for the second respondent insurance company.

4.Mr.F.Terry Chellaraja, learned counsel appearing for the appellants would contend that Form 16 issued by the employer shows that the monthly income of the deceased was about Rs.46,748/-. Therefore, according to him, the Tribunal was in error in fixing the monthly income of Rs.30,000/- only.

5.Per contra, Mr.Michael Visuvasam, learned counsel appearing for the second respondent insurance company would contend that there is a discrepancy between the salary certificate issued and Form 16. The salary certificate shows the monthly income of Rs.45,500/- and he would also invite our attention to the income tax returns filed for the previous years which show much lesser income.

6.We have considered the rival submissions as well as the documents viz., salary certificate, Form 16 and income tax returns for the previous years.

7.Considering the discrepancy between the salary certificate and Form 16 as well as qualification of the deceased, we are of the opinion that the monthly income would be safely taken as Rs.40,000/-. The deceased being aged 41 years at the time of accident, 30% is to be added towards future prospects. Therefore, the monthly income comes to Rs.52,000/-. Since there are three dependants, 1/3rd of the monthly income is to be deducted towards his personal expenses. Thus the monthly pecuniary loss would be Rs.34,667/-. The multiplier to be adopted is 14. The total pecuniary loss is worked out as follows:

Rs.34,667/- x 12 x 14 = Rs.58,24,056/-

8.As rightly pointed out by Mr.Michael Visuvasam, learned counsel appearing for the second respondent insurance company, the compensation awarded under the conventional heads is on the higher side. We are of the considered opinion that the compensation for loss of consortium to the first claimant can be fixed at Rs.40,000/-, loss of love and affection for the two minor children can be fixed at Rs.25,000/- each, the compensation for loss of estate is reduced to Rs.15,000/- and the compensation of Rs.25,000/- awarded towards funeral expenses is sustained. Thus the total compensation is arrived at Rs.59,54,056/-.

9.In view of the above, the appeal is partly allowed the award of the Tribunal is modified to Rs.59,54,056/- with 7.5% interest and proportionate costs. The second respondent insurance company will deposit the enhanced amount within a period of eight weeks from the date of receipt of a copy of this order. No costs.

10.We are informed by the learned counsel for the appellants that the first appellant has already withdrawn a sum of Rs.27,43,000/- with proportionate interest and costs as awarded by the Tribunal. Considering the same, the enhanced compensation is directed to be paid to the minor claimants in equal moieties. The Tribunal shall deposit the enhanced compensation in fixed deposit in any one of the nationalised banks. Since there is no appeal by the insurer, the direction to pay and recover made by the Tribunal is sustained.

Sd/-
Assistant Registrar(CS v)

//True Copy//

Sub Assistant Registrar

To

1.The II Judge, Court of Small Causes
(Motor Accidents Claims Tribunal),
Chennai.

2.The Record Keeper, V.R.Section,
High Court, Madras.

+1cc to Mr.F.Terry Chellaraja , Advocate SR.No. 58940
+1cc to Mr.Michael Visuvasam , Advocate SR.No. 58446

C.M.A.No.1395 of 2018

ASK(11/10/2018)