IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CMA No.1783 of 2018

1.Thenmozhi
2.Kavitha
3.Selvaraj
4.Sagila
5.Sudha
6.Boologam ... Appellants/Petitioners

-vs-

1.B.Mahalakshmi

2.The Manager,
The Oriental Insurance Company Limited,
No.173, J.N.Road, Tiruvallur - 602 001
...Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 27.06.2012 made in MCOP.No.264 of 2010 on the file of the Motor Accident Claims Tribunal, Principal District Judge, Tiruvallur.

For Appellants : Mr.T.Ananthsekar

For Respondents : Mr.D.Baskaran for R2



J U D G M E N T

[Judgment of the Court made by R.SUBRAMANIAN,J.]



The claimants/ petitioners in MCOP.No.264 of 2010 on the file of the Motor Accident Claims Tribunal, Tiruvallur have come forward with the appeal seeking enhancement of the compensation awarded by the Tribunal in MCOP.No.264 of 2010. The said claim petition was filed by the appellants seeking compensation of Rs.40,00,000/- for the death of one Mani who is the husband of the 1st appellant, father of the appellants 2 to 5 and son of the 6th appellant.

2. According to the appellants, the said Mani who was a sub-contractor doing centering works was traveling in his motor cycle on the Tiruttani to Tirupathi National Highways near Ponpadi Colony, Tirutani Taluk. While so, a Toyoto Qualis car bearing registration No.TN-07-P-7221 came in the opposite direction on the wrong side of the road being, driven in a rash and negligent manner, dashed against the two wheeler and as a result of the accident the rider viz., the said Mani died on the spot. Claiming that the deceased was earning substantial amount as a Centering sub-contractor, the claimants, sought for a compensation of Rs.40,00,000/-.

3. The claim petition was resisted by the 2nd respondent Insurance Company contending that the accident occurred due to the negligence of the deceased Mani who was riding the motor cycle. It was also contended that there was a delay in filing the FIR. The Insurance Company would also claim that the deceased did not have a valid driving license and the motor cycle bearing registration No.TN-20-AF-0178 did not have any insurance. Pointing out that the deceased was not even an income tax assessee, the quantum of compensation claimed was also disputed.

4. The Tribunal on a consideration of the evidence on record held that it was the driver of the car who was responsible for the accident. The Tribunal also took note of the oral evidence of PWs 2 and 3 who were eye witnesses to the accident, the contents of the FIR was also taken note of by the Tribunal. On the quantum, the Tribunal found that there is no proof to show the net income of the deceased. It, however, took note of the payments received by him under Ex.P10 which is Form 16 showing the tax deducted at source from the payments made to the deceased and concluded that a notional income can be arrived at on the basis of said payments.

5. On the said conclusion, the Tribunal fixed the monthly income of the deceased at the rate of Rs.6,000/- per month and after deducting 1/3rd towards personal expenses, arrived at a monthly loss of dependency at Rs.4,000/-. Adopting a multiplier of 13, the Tribunal arrived at the total monetary loss to Rs.6,24,000/-. Awarding a sum of Rs.5,000/- towards transportation charges, Rs.5,000/- towards funeral expenses and Rs.10,000/- towards loss of consortium, the Tribunal awarded a total compensation of Rs.6,44,000/-. The said compensation was also apportioned by the Tribunal at Rs.3,00,000/- to the 1st appellant/ wife, Rs.75,000/- to the daughters and Rs.44,000/- to the mother. Claiming that the compensation awarded is very low the claimants are before us by way of this appeal.

6. We have heard Mr.T.Ananthsekar, learned counsel appearing for the appellants and Mr.D.Baskaran, learned counsel appearing for the 2nd respondent. The 1st respondent though served has not chosen to appear either in person or through counsel.

7. Mr.T.Ananthsekar, learned counsel appearing for the appellants would contend that a perusal of Ex.P10 viz., Form 16 (A) would show that the deceased had received a sum of Rs.16,36,033/- for the period from 31.05.2008 to 31.03.2009 from M/s. Coramandel Engineering Company Ltd., as its sub-contractor doing centering work. Even assuming that the deceased had got a 10% profit on the amount received, he would have got a sum of Rs.1,63,000/- per annum. Urging us to take into account the future prospects also Mr.T.Anandhsekar, would contend that the monthly income should be taken as Rs.15,000/- per month. Since the deceased is a self-employed person, Mr.T.Anandhsekar, would seek an addition of 25% towards future prospects as per the judgment of the larger Bench of the Supreme Court in National Insurance Co. Ltd vs Pranay Sethi and others reported in 2017 (2) TN MAC 609 (SC). Thus worked out, according to him, the monetary loss alone would amount to Rs.21,93,672/-. Therefore, according to the learned counsel, the total compensation should be fixed at Rs.24,23,672/-.

8. Contending contra, Mr.D.Baskaran, the learned counsel appearing for the respondent Insurance Company would submit that the Tribunal was justified in fixing the monthly income at Rs.6,000/- in the absence of evidence. He would also point out that the Tribunal has granted the conventional heads of compensation also which makes the overall compensation justifiable.

9. We have considered the rival submissions. Ex.P10, viz., Form 16A issued by M/s.Coromandel Engineering Company Ltd., would show that the deceased has received a sum of Rs.16,36,033/- for the contract work done by him for the period between 31.05.2008 and 31.03.2009 i.e., for a period of 11 months. Even if the profits are worked out at 10%, the monthly income of the deceased works out to Rs.14,873/- which could be safely rounded of to Rs.15,000/-. Adding 25% towards future prospects the monthly income would be Rs.18,750/-. Though there are six claimants, we find that three of the daughters were married at the time of the accident. Therefore, a deduction of 1/3rd could be made towards his personal expenses. Thus the monthly income after deduction of personal expenses would be Rs.12,500/-. Adopting a multiplier of 13, the total monetary loss due to the death of the deceased would be Rs.19,50,000/-. The loss of consortium to the wife is fixed at Rs.40,000/- and the loss of love and affection for the six claimants is fixed at Rs.1,50,000/- at Rs.25,000/- each. A sum of Rs.10,000/- is

granted towards funeral expense.

10. Thus, in all, the claimants would be entitled to Rs.21,50,000/- as compensation with interest at 7.5% per annum and proportionate costs. The 2nd respondent Insurance Company shall deposit the balance amount within a period of six weeks from today. Out of the enhanced compensation the 1st appellant being the wife would be entitled to a sum of Rs.9,00,000/- with proportionate interest and the children viz., appellants 2 to 5 would each be entitled to Rs.2,00,000/- and the mother the 6th appellant would be entitled to Rs.4,50,000/- with proportionate interest. The appellants shall pay the difference in Court fee if any. In fine, the appeal is partly allowed. There will be no order as to costs in this appeal.

dsa

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

The Motor Accident Claims Tribunal,
Principal District Judge, Tiruvallur.

+1cc to Mr.D.Bhaskaran, Advocate, S.R.No.55969
+1cc to Mr.T.Ananthasekar, Advocate, S.R.No.56465

CMA No.1783 of 2018

PVS(CO)
KAK(08/02/2019)