IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.09.2018

CORAM

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

C.M.A.No.1460 of 2017

1. B.Jayasri

2. B.Ravi Prakhyasri
(2nd appellant declared as Major vide order of Court dt. 28.7.17 in CMP No.12008/17 in CMA No.1460/17)

3. Minor B.Sai Sri Vindhya
(3rd appellant is represented by her mother, the 1st Petitioner herein)
.. Appellants/Petitioners

-Vs-

1. S.Ashok (remained ex parte)

2. ICICI Lombard General Insurance Co.Ltd.,
I Floor, Arihant Plaza, 85, Wall Tax Road
Chennai 600 003

3. E.Rajiv Gandhi (remained ex parte)
.. Respondents/Respondents

Memorandum of Grounds of Civil Miscellaneous Appeal under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 29.04.2015 made in M.C.O.P.No.3264 of 2011 on the file of the Motor Accidents Claims Tribunal/Chief Judge, Court of Small Causes, Chennai.

For Appellants	::	Mr.K.S.V.Prasad
For Respondents	::	Mrs.R.Sree Vidhya for R2 R1 & R3 - Ex parte

JUDGMENT

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

Challenging the award of Rs.22,20,912/- for the death of one Srinivasa Rao in the motor accident that occurred on 22.12.2010, the Claimants are on appeal seeking enhanced compensation.

2. It is not in dispute that the said Srinivasa Rao was employed as a Commandant in the C.I.S.F., at the time of the accident. His salary slip has been produced to show that he was drawing a salary of Rs.25,395/-. The Tribunal, accepting the said salary slip, reduced the same to Rs.21,776/- after deducting the transportation allowance and ration money. The Tribunal has further deducted a sum of Rs.4,000/- towards income tax and one-third towards the personal expenses of the deceased. Thus, the Tribunal, applying the multiplier of '14', arrived at the compensation towards loss of dependency at Rs.19,90,912/- (Rs.17776 x 2/3 x 12 x 14). The Tribunal further awarded a sum of Rs.50,000/- for loss of consortium to the wife, Rs.50,000/- each to the appellants 1 to 3 for loss of love and affection. Rs.25,000/- was awarded towards funeral expenses and Rs.5,000/- towards transportation.

3. We have heard Mr.K.S.V.Prasad, learned counsel for the appellants-Claimants and Mrs.R.Sree Vidhya, learned counsel for the second respondent-Insurance Company. Notice to the respondents 1 & 3 was waived.

4. Mr.Prasad, learned counsel for the Claimants would contend that the Tribunal should not have deducted any amount from the salary, inasmuch as the same could be a loss to the family. Pinpointing that the Tribunal has deducted one-third towards the personal expenses of the deceased, he would contend that the salary as a whole should have been taken for the purposes of calculation of the loss of dependency.

5. Per contra, Mrs.R.Sree Vidhya, learned counsel for the Insurance Company would contend that the overall compensation is just and proper and the deductions made by the Tribunal are justified.

6. We have considered the rival submissions.

7. As a Commandant in the C.I.S.F., which is an Uniformed Service, the deceased would have been granted certain facilities and the same are only in recognition of his service. So the same should be taken as loss of estate to the Claimants. We, therefore, take the Gross Pay of Rs.25,395/- as the monthly

income of the deceased. The Tribunal has not added any amount towards future prospects. In view of the judgment of the Larger Bench of the Hon'ble Supreme Court in National Insurance Company Limited v. Pranay Sethi and others, 2018-1-L.W. 331, 30% is to be added towards future prospects. Adding 30% to the annual income, the total annual income after deduction of income tax would be Rs.3,92,162/-. Deducting one-third for the personal expenses, the annual loss of dependency would be Rs.2,61,441/-. Applying the multiplier of '14', the total loss of dependency works out to Rs.36,60,174/-. The Tribunal has awarded Rs.50,000/- towards loss of consortium to the wife. The same is modified as Rs.40,000/- and the award of Rs.50,000/- towards loss of love and affection for the two daughters is modified as Rs.40,000/- each. The award of Rs.25,000/- for funeral expenses and Rs.5,000/- for transportation are sustained. The Tribunal has not awarded any amount towards loss of estate and damage to clothing. We award a sum of Rs.15,000/- for loss of estate and a sum of Rs.5,000/- for damage to clothing. Thus, the modified compensation will be as follows:-

Sl. No.	Heads	Amount
1	Loss of dependency	Rs.36,60,174/-
2	Loss of consortium for the wife viz., first appellant	Rs. 40,000/-
3	Loss of love and affection for the two daughters viz., apellants 2 & 3 @ Rs.40,000/- each	Rs. 80,000/-
4	Funeral expenses	Rs. 25,000/-
5	Transportation	Rs. 5,000/-
6	Loss of estate	Rs. 15,000/-
7	Damage to clothing	Rs. 5,000/-
	Total	Rs.38,30,174/- rounded off to Rs.38,30,500/-

The award will carry interest at 7.5% per annum from the date of petition till the date of payment.

8. It is stated that the Insurance Company has deposited the entire amount of compensation along with interest.

9. Mr.Prasad would dispute the claim and contend that the amount deposited is not the entire compensation with interest and costs.

10. We direct the Insurance Company to deposit the entire compensation as per the modified award, less the amount already deposited, to the credit of the M.C.O.P.No.3264 of 2011 before the Motor Accidents Claims Tribunal, Chief Judge, Court of Small Causes, Chennai within a period of four weeks from the date of receipt of a copy of this judgment. The award is apportioned as follows:-

(i) The first appellant-Wife shall take Rs.18,00,000/- with proportionate interest and entire costs.

(ii) The appellant Nos.2 & 3, who are the daughters, will take Rs.10,15,250/- each with proportionate interest.

(iii) However, the share of the third appellant, being a minor, shall lie in fixed deposit with a nationalised bank till she attains majority and the first appellant-mother will be entitled to withdraw the accrued quarterly interest for the maintenance of the third appellant directly from the Bank.

(iv) The major claimants, namely, the appellants 1 & 2 are entitled to withdraw the entire compensation on such deposit, after paying the difference of Court fee.

11. The civil miscellaneous appeal is allowed with the above modification in the award of the Tribunal. There is no order as to costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accidents Claims Tribunal,
Chief Judge,
Court of Small Causes,
Chennai.

+2ccs to Mr.K.S.V.Prasad, Advocate Sr.64753
+1cc to Mr.R.Srividhya, Advocate Sr.65272

gj[co]
srg 22/11/2018