IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 11.01.2018

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

C.M.A.No.1325 & 1326 of 2014
and
M.P.Nos.1 & 1 of 2014

M/s.Royal Sundaram,
Alliance Insurance Co.Ltd.,
Rep. by its Manager,
Sundaram Towers,
No.45 & 46, Whites Road,
Chennai-600 014. ... Appellant in both CMAs/2nd respondent

Vs.

1.Murugammal @ Nandhini
2.Minor Richitha
3.Minor Pooja
4.Minor Naveen
(Minors R2 to R4 are rep. by their mother
and natural guardian Murugammal @ Nandhini-1st respondent)

5.Manoharan
6.Nagalakshmi
7.Amudha ..... Respondents 1 to 7 in CMA.1325/2014/Claimants
8.Narasimha Murthy
(8th Respondent set exparte in
Lower Court) ... 8th Respondent/1st respondent

1.Lakshmi
2.Balagan
3.Muniammal .... Respondents 1 to 3/Claimants

4.Narasimha Murthy .... 4th Respondent/1st Respondent
(4th respondent set expart in
Lower Court)

Civil Miscellaneous Appeals have been filed under Section 173 of Motor Vehicles Act 1988 against the order and decree dated 30.10.2013 in M.C.O.P.Nos.573 & 575 of 2011 respectively passed by the Motor Accident Claims Tribunal (Additional District Judge) at Krishnagiri.

For Appellant : M/s.R.Sree Vidhya
For Respondents: No appearance

COMMON JUDGMENT

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

Challenging the quantum of compensation awarded by the Motor Accident Claims Tribunal (Additional District Judge) at Krishnagiri, in and by common award dated 30.10.2013 in M.C.O.P.Nos.573 & 575 of 2011 respectively, the present appeals have been filed by the Insurance Company.

2.Since both the above appeals arose out of a common award passed by the Tribunal, these appeals are disposed of by way of this common judgment.

3.As both the above appeals have been filed questioning only the quantum of compensation alone, it is not necessary for this Court to deal with the other aspects of the award passed by the Tribunal.

C.M.A.No.1325 of 2014 (M.C.O.P.573 of 2011)

4.So far as CMA.No.1325/2014 (MCOP.573/2011) is concerned, the respondents 1 to 7 in the said Appeal are the claimants before the Tribunal. They are the wife, three minor children, father, mother and sister of the deceased Sudhakar. As regards the quantum of compensation, it is the case of the claimants before the Tribunal that the deceased Sudhakar, by running a bakery shop and doing real-estate business, was earning a sum of Rs.40,000/- to Rs.50,000/- per month. Before the Tribunal, in order to prove the income earned by the deceased Sudhakar, on the side of the claimants, the 1st claimant/wife of the deceased examined herself as P.W.1. Except her oral testimony, no other documentary proof was produced on the side of the claimants to show the income earned by the deceased. Hence, the Tribunal has fixed only a sum of Rs.8,000/- as monthly income of the deceased as against the claim of Rs.50,000/- made by the claimants. Thereafter, by deducting 1/5th amount towards personal expenses from the said sum of Rs.8,000/- the Tribunal has arrived at a sum of Rs.6,400/- as monthly loss of contribution. Thereafter, by applying multiplier 18 based on the age of the deceased who was aged 27 years at the time of death, the Tribunal has awarded a sum of Rs.13,05,600/- under the head of loss of income.

5.Now, it is the contention of the learned counsel appearing for the appellant/Insurance Company that when no documentary evidence was produced on the side of the claimants to show the income earned by the deceased, the Tribunal ought not to have fixed higher sum of Rs.8,000/- as monthly income of the deceased. Hence, according to the learned counsel for the appellant/Insurance Company, by fixing a lessor sum as monthly income of the deceased, the compensation amount awarded by the Tribunal has to be modified.

6.But, on a perusal of the award passed by the Tribunal, We find that P.W.1, wife of the deceased, had categorically stated in her evidence that the deceased was running a bakery shop as well as doing real-estate business and earning a sum of Rs.40,000/- to Rs.50,000/- per month. Whereas the Tribunal has fixed only a sum of Rs.8,000/- as monthly income of the deceased. Though the sum of Rs.8,000/- fixed by the Tribunal as monthly income of the deceased is on the higher side in the absence of any documentary evidence, considering the fact that the Tribunal has not awarded any amount towards future prospects, We do not find any infirmity in the total compensation amount of Rs.13,05,000/- awarded by the Tribunal under the head of loss of income, as the same cannot be said to be on the higher side.

7.That apart, the Tribunal has awarded a sum of Rs.15,000/- for transportation and funeral expenses, a sum of Rs.50,000/- for loss of consortium to the 1st claimant/wife and a sum of Rs.70,000/- for loss of love and affection. Thus, the Tribunal has passed an award for a total sum of Rs.14,40,600/- as compensation. Considering the fact that the wife has lost her husband at her young age and the minor children have lost their father at their tender age, We do not find any infirmity in the compensation amount of Rs.14,40,600/- awarded by the Tribunal. Hence, We confirm the compensation amount of Rs.14,40,600/- awarded by the Tribunal.

C.M.A.No.1326 of 2014 (M.C.O.P.No.575 of 2011)

8.So far as CMA.No.1326/2014 (MCOP.575/2011) is concerned, it is the case of the claimants, who are parents and sister of the deceased Munisamy @ Munisamian, that the deceased was earning a sum of Rs.35,000/- to Rs.40,000/- per month by doing real-estate business and working as a tailor. But, the Tribunal has fixed a sum of Rs.12,000/- as monthly income of the deceased. Thereafter, by deducting 50% amount towards personal expenses, by applying multiplier 17, the Tribunal has awarded a sum of Rs.12,69,000/- as total compensation.

9.Now, it is the contention of the learned counsel for the appellant/Insurance Company that in the absence of any evidence to show the income earned by the deceased, the Tribunal ought not to have fixed higher sum of Rs.12,000/- as monthly income. Further, when in the connected similar matter the Tribunal has chosen to fix only a sum of Rs.8,000/- as monthly income, there is no justification in fixing Rs.12,000/- as monthly income of the deceased in this case. Thus, according to the learned counsel for the appellant/Insurance Company, by fixing a lessor amount as monthly income of the deceased, the compensation amount awarded by the Tribunal has to be modified.

10.Keeping in view the submission made by the learned counsel for the appellant, We have carefully gone through the entire materials available on record.

11.We are of the opinion, as contended by the learned counsel for the appellant/Insurance Company, that in the absence of any documentary evidence to show the income earned by the deceased, a sum of Rs.12,000/- fixed by the Tribunal is on the higher. Hence, by fixing a sum of Rs.8,000/- as monthly income of the deceased, the calculation has to be made to arrive at a just and proper compensation. Accordingly, the sum of Rs.12,000/- fixed by the Tribunal as monthly income of the deceased is hereby reduced to Rs.8,000/-. If a sum of Rs.8,000/- is fixed as monthly income of the deceased, 40% amount as to be added towards future prospects and if so added, the total works out to Rs.11,200/- (8,000 + 3,200). Then, the annual income works out to Rs.1,34,400/- (11,200 x 12). If 50% amount is deducted towards personal expenses, the annual loss of contribution to the family works out to Rs.67,200/-. At the time of accident, the deceased Munisamy @ Munisamian was aged 30 years. Hence, the correct multiplier that has to the applied in this case is 17 and if so applied, the total loss of income works out to Rs.11,42,400/- (67,200 x 17). Therefore, the sum of Rs.12,24,000/- awarded by the Tribunal under the head of loss of income is hereby modified/reduced to Rs.11,42,400/-. That apart, the Tribunal has awarded a sum of Rs.30,000/- for loss of love and affect and a sum of Rs.15,000/- for transportation & Funeral Expenses, which appear to be reasonable. Hence, the same are hereby confirmed. Thus, the total compensation amount of Rs.12,69,000/- awarded by the Tribunal is hereby modified/reduced to Rs.11,87,400/-. The break up details of the modified/reduced compensation amount are as follows:-

Loss of Income	:	Rs.11,42,400/-
Loss of Love and affection	:	Rs. 30,000/-
Transportation & Funeral Expenses	:	Rs. 15,000/-
Total		Rs.11,87,400/-

In the result,

(i)C.M.A.No.1325 of 2014 is dismissed and the compensation amount of Rs.14,40,600/- (Rupees Fourteen Lakhs Fourty Thousand only) awarded by the Tribunal is confirmed and the claimants are entitled to their share as apportioned by the Tribunal. The appellant/Insurance Company is directed to deposit the entire compensation amount with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, after deducting the amount if any already deposited, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the claimants 1, 5, 6 & 7 are entitled to withdraw their share amount by making necessary application before the Tribunal. The share amounts of the minors/claimants 2 to 4 shall be deposited in a fixed deposit in any of the nationalised bank till they attain majority and the their mother/1st claimant is permitted to withdraw the interest accrued thereon once in every three months.

(ii)C.M.A.No.1326 of 2014 is partly allowed and the total compensation amount of Rs.12,69,000/- (Rupees Twelve Lakhs Sixty Nine Thousand Only) awarded by the Tribunal is hereby modified/reduced to Rs.11,87,400/- (Rupees Eleven Lakhs Eighty Seven Thousand and Four Hundred Only). The 1st claimant/mother is entitled to Rs.6 lakhs and 2nd claimant is entitled to Rs.5 lakhs and the 3rd claimant/sister is entitled to Rs.87,400/-. The Insurance Company is directed to deposit the entire compensation amount with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, after deducting the amount if any already deposited, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the claimants are permitted to withdraw their respective share amounts with accrued interest thereon by making necessary application before the Tribunal.

Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

ssv

To:

The Motor Accident Claims Tribunal
(Additional District Judge) at Krishnagiri.

Copy to:

The Section Officer,
VR Section,
High Court, Madras.

+1cc to M/s.R.Sreevidhya, Advocate sr.no.3496

C.M.A.No.1325 & 1326 of 2014
and
M.P.Nos.1 & 1 of 2014

ssi(co)
nr 13/03/2018