IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.09.2018

CORAM:

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

CMA No.1617 of 2015
and M.P.No.1 of 2015

United India Insurance Co. Ltd.,
No.38, Anna Salai,
Chennai 2. .... Appellant

-vs-

1.S.Periyasamy
2.Velu
.... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, 1988 against the judgment and decree dated 18.07.2014 made in M.C.O.P.No.31 of 2011 on the file of the Motor Accidents Claims Tribunal, II Additional District Court, Poonamallee.

For Appellant : Mr.S.Arun Kumar

For Respondents: Mr.K.Varadha Kamaraj (For R1)
No appearance (For R2)

J U D G M E N T

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

Challenge in the appeal is to the award of a sum of Rs.60,13,610/- to the father of one P.Karthikeyan, who died in a motor accident that occurred on 14.11.2010.

2.The accident occurred due to collision between an auto rickshaw and a two wheeler which the deceased was riding at the time of the accident. Though the claimant faulted the auto rickshaw driver as the cause for the accident, the Tribunal found that the deceased has also contributed to the accident to a certain extent and therefore apportioned the negligence at 75% on the auto driver and 25% on the deceased. On the quantum, the deceased was employed and was drawing a monthly salary of Rs.62,917/-. The Tribunal took the said salary which is evidenced by Ex.P24, salary certificate and Ex.P25, details of salary and worked out the monthly loss of dependency at Rs.41,945/-. Applying the multiplier of '17', the total loss of dependency was worked out at Rs.85,56,780/-. After deducting 10% towards Income Tax, the total loss of dependency was arrived at Rs.77,01,102/-. The Tribunal awarded a sum of Rs.20,000/- towards loss of love and affection to the sole claimant, father of the deceased, Rs.2,87,044/- towards medical expenses and Rs.5,000/- each towards transport and funeral expenses. Thus, the entire compensation was worked out at Rs.80,18,146/-. Deducting 25% towards contributory negligence, the Tribunal awarded Rs.60,13,610/-. Aggrieved, the Insurance Company is on an appeal.

3.We have heard Mr.S.Arun Kumar, learned counsel for the Insurance Company and Mr.K.Varadha Kamaraj, learned counsel appearing for the claimant. The 2nd respondent remained exparte before the Tribunal and hence, notice to him in this appeal is dispensed with.

4.Mr.S.Arun Kumar, learned counsel for the Insurance Company would contend that since the father alone was the claimant and the deceased was admittedly a divorcee, the Tribunal erred in deducting only 1/3 towards personal expenses. It is also his contention that the Tribunal has deducted 10% towards Income Tax as against 25%.

5.Contending contra, Mr.K.Varadha Kamaraj, learned counsel for the sole claimant would submit that the Tribunal has not taken into account the future prospects.

6.We find that the award of the Tribunal requires modification in view of the contentions raised by the learned counsel. The income of the deceased is shown to be Rs.62,917/- per month. So his annual income is above Rs.5,00,000/-. Therefore, the Tribunal should have deducted 20% towards Income Tax, instead of 10%. The deceased was aged 31 years at the time of the accident. Therefore, 40% should be added towards future prospects. The Tribunal should have deducted one half for the personal expenses of the deceased. Thus, worked, the pecuniary loss would be:

Monthly salary Rs.62,917/-

less: Income Tax at 20% - Rs.12,583/-

....

Rs.50,334/-

Add: 40% of Rs.62,917/-,

towards future prospects + Rs.25,166/-
....
Rs.75,500/-
50% towards personal
expenses - Rs.37,750/-
....
Monthly loss of dependency = Rs.37,750/-
....

The total loss of dependency would be Rs.37,750 x 12 x 16 = Rs.72,48,000/-. The Tribunal has awarded a sum of Rs.2,87,044/- towards medical expenses, Rs.20,000/- towards loss of love and affection and Rs.5,000/- each towards transport charges and funeral expenses.

7.We find that the Tribunal has not awarded any amount towards loss of estate. We award a sum of Rs.15,000/- towards loss of estate. The award towards funeral expenses is on the lower side. Hence, the same is enhanced to Rs.25,000/-. Thus worked out, the total award amount would be Rs.76,00,044/- and the same is rounded off to Rs.76,00,000/-. Since the claimant has not challenged the finding of the Tribunal on negligence, he would be entitled to 75% of Rs.76,00,000/- as compensation i.e., Rs.57,00,000/-. The award amount will carry an interest at the rate of 7.5% per annum.

8.It is stated that the Insurance Company has deposited 50% of the compensation awarded by the Tribunal and the claimant was also permitted to withdraw 50% of the amount so deposited. The Insurance Company shall deposit the balance amount with interest, within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the Tribunal is directed to deposit 50% of the total award amount in any one of the nationalised bank for a period of three (3) years in a Fixed Deposit paying cumulative interest. It is made clear that the claimant shall not be permitted to withdraw the said amount for the said period of three years.

9.In fine, the appeal is allowed in part. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

gsa

To

1.The Motor Accidents Claims Tribunal,
II Additional District Judge,
Poonamallee.

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

+1cc to Mr.K.Varadha Kamaraj, Advocate, S.R.No.63595

+1cc to Mr.S.Arunkumar, Advocate, S.R.No.63623

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and M.P.No.1 of 2015

KS(CO)
GSP(07/12/2018)