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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.09.2018

CORAM:

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

CMA No.1750 of 2015

- 1.M.Vijayalakshmi
- 2.M.Sakthi Priya (Minor)
C.Shanthi (since died)
M.Chinnappan (died)
(Minor rep. by her mother and N.F. the first Appellant)

Cause title accepted vide order of court dated
1.7.15 made in M.P.No.1/2015 in CMA Sr 927/2015)

.... Appellant/ petitioner

-vs-

- 1.Kosalai
(1st respondent remained ex parte)
- 2.The New India Assurance Co. Ltd.,
No.45, Moore Street, V Floor,
Chennai - 600 001. Respondents/ Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 05.12.2013 made in M.A.C.T.O.P.No.1683 of 2011 on the file of the Special Sub Judge - 1 (Motor Accidents Claims Tribunal) Chennai.

For Appellant : Mr.N.M.Muthurajan

For Respondents: Ms.Srividhya for R2

J U D G M E N T

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

The claimants, who are the wife and minor child of one C.Manivelan, who died in a motor accident on 19.02.2011 are the appellants.

2. According to the claimants, the deceased was a partner in a partnership firm carrying on business in courier service viz., Trinity Express Courier Service and was earning a sum of Rs.1,20,000/- per month. The claimants sought for compensation of Rs.75 lakhs.



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3. The claim was resisted by the Insurance company by contending that the accident did not occur due to the rash and negligent driving of the offending vehicle viz., the lorry and that the driver of the lorry did not have valid license. On the quantum, the Insurance Company denied the fact that the deceased was carrying on business in courier service. The compensation claimed was also termed as "Excessive".

4. The Tribunal on a consideration of evidence on record concluded that the accident occurred due to the rash and negligent driving of the lorry bearing Registration No.TN-25-V-5018. The said finding is not challenged by the Insurance Company. On the quantum, the Tribunal disbelieved the unregistered Partnership Deed produced as Ex.P8. The Tribunal took the monthly income of the deceased as Rs.7,000/- including future prospects and granted a sum of Rs.8,96,064/- towards pecuniary loss. The Tribunal granted a sum of Rs.50,000/- towards Loss of Consortium; Rs.50,000/- towards Loss of Love and Affection and Rs.10,936/- towards Funeral Expenses.

5. We have heard Mr.N.M.Muthurajan, learned counsel for the appellant and Ms.Srividhya, learned counsel for the second respondent - Insurance Company.

6. Though the Tribunal has rejected Ex.P8, it is seen from Ex.P12 viz. TDS Certificate in Form 16-A issued by DHFL that the Pan Number of the deceased is shown as the Pan Number of the deductee. The name and the address of the deductee is shown as Trinity Express Courier Service, No.51, Thayar Sahib Street, Mount Road, Chennai -2. This address tallies with the other Form 16-A issued by the LIC Housing Finance Limited, which has been marked as Ex.P11. We are therefore of the view that the Tribunal was not justified in rejecting the claim of the appellants that the said Manivelan was carrying on business in the name of Trinity Express Courier Service in partnership with the first appellant. There is no direct evidence for the income earned by the deceased Manivelan. The accounts of the partnership firm have not been produced. We are therefore of the considered opinion that the monthly income of the deceased could be taken as Rs.10,000/- and by adding 40% towards future prospects, the monthly income would be Rs.14,000/-. The deceased is survived by his wife and daughter. Hence, 1/3rd should be deducted towards his personal expenses. If so calculated, the pecuniary loss would be Rs.14,000 - 4666 = 9334 x 12x 15 = Rs.16,80,120.



(vi) The appellants/Claimants shall pay necessary court fee, if any, for the enhanced compensation amount.

No costs.

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Sd/-
Assistant Registrar (CS v)

//True Copy//

Sub Assistant Registrar

To
Special Sub Judge - 1
(Motor Accidents Claims Tribunal) Chennai.

+2cc to Mr.N.M.Muthurajan, Advocate SR.No. 61389
+1cc to Ms.Srividhya , Advocate SR.No. 61378

CMA No.1750 of 2015

ASK(20/11/2018)