IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.09.2018

CORAM:

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

CMA No.2266 of 2016

1.S.Devi
2.Minor Thanishkumar
3.Minor Priyadharsini
4.Kanniammal
5.Saminathan
(Minor petitioners 2 and 3 are represented by their natural guardian/friend mother 1st petitioner S.Devi) .... Appellants

-vs-

1.K.Balasubramanian

2.The National Insurance Company Ltd.,
Motor Third Party Claims Office,
No.751, Anna Salai,
3rd Floor, Chennai 600 002. .... Respondents
(No relief sought against the 1st respondent. Hence, notice may be dispensed with)

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, 1988 against the judgment and decree dated 26.03.2015 passed in M.C.O.P.No.140 of 2012 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Chengalpattu.

For Appellants : Mr.M.Sivakumar

For Respondents: No appearance (for R1)
Mr.S.Vadivel (for R2)

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J U D G M E N T

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

The claimants are the wife, minor children and parents of one Senthilkumar, who died in a road accident that occurred on

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09.10.2012. Since the appeal is by the claimants, the only question that is to be decided is the quantum.

2.According to the claimants, the deceased was drawing a sum of Rs.27,500/- per month as Technical Officer in M/s.Nihon Parkerzing India Private Ltd. Based on the said salary, the claimants sought for compensation of Rs.50,00,000/-. The Insurance Company resisted the claim contending that the age, educational qualification and the income of the deceased have been boosted up in order to claim huge compensation. The claimants produced Ex.P10, appointment letter, Ex.P11, Identity card and Ex.P12, salary certificate, apart from producing the bank statement of the deceased as Ex.P7. Pan card of the deceased was also produced as Ex.P8. The Tribunal took the monthly income at Rs.18,000/- and awarded a sum of Rs.24,48,000/- towards loss of dependency. The Tribunal also awarded a sum of Rs.1,00,000/- towards loss of consortium to the wife, Rs.2,00,000/- towards loss of love and affection to the minor children at Rs.1,00,000/- each and Rs.1,00,000/- towards loss of love and affection to the parents at Rs.50,000/- each, Rs.25,000/- for funeral expenses and Rs.5,000/- towards transportation charges. In all, the Tribunal awarded a sum of Rs.28,78,000/- as compensation. The claimants seek enhancement.

3.We have heard Mr.M.Sivakumar, learned counsel for the appellants and Mr.S.Vadivel, learned counsel for the Insurance Company.

4.Mr.M.Sivakumar, learned counsel for the appellants would contend that the Tribunal erred in fixing the monthly income at Rs.18,000/-, without any basis what so.

5.He would point out that the salary as per the appointment order, Ex.P10 is Rs.3.3 lakhs per year, which is equivalent to Rs.27,500/- per month. Apart from producing the salary certificate as Ex.P12, the claimants have also produced the bank statement of the deceased as Ex.P7 and they have also examined Ex.P7 to prove the salary certificate. Perusal of the bank statement would show that a sum of Rs.26,180/- has been deposited to the credit of his account on 01.10.2012 by the employer. There is no reason to disbelieve the said document. This sum of Rs.26,180/- represents the basic salary, provident fund, house rent allowan6e and special allowance as reflected in the salary certificate, Ex.P12. We are therefore of the considered opinion that the Tribunal was not right in fixing Rs.18,000/- as the monthly income of the deceased, ignoring the vital documents that has been placed to show the income of the deceased.

6.Accepting Exs.P7, P10 and P12, we fix the monthly income of the deceased at Rs.26,000/- adding 40% towards future prospects, the monthly income for the purpose of calculation of the loss of dependency works out to Rs.36,400/-. Deducting ¼ towards personal expenses, the monthly loss of dependency works

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out to Rs.27,300/-. The deceased being aged about 28 at the time of the accident, the multiplier of '17' is to be adopted. Annual income of the deceased is Rs.3,12,000/-, if calculated at Rs.26,000/- per month. He would have been liable to pay Income Tax. Hence, 10% of the said sum, viz., Rs.31,200/- is to be deducted from the annual loss of dependency fixed by us. The annual loss of dependency would be Rs.3,27,600/-. Deducting Rs.31,200/- towards income tax, the annual loss of dependency works out to Rs.2,96,400/-. We have already concluded that the multiplier to be applied is '17'. Therefore, the total loss of dependency would be Rs.2,96,400/- x 17 = Rs.50,38,800/- and the same is rounded off to Rs.50,40,000/-. The award of the Tribunal on the heads of loss of love and affection and loss of consortium are on the higher side. We therefore, modify the same and award Rs.40,000/- towards loss of consortium, Rs.50,000/- towards loss of love and affection to the two children at Rs.25,000/- each, Rs.25,000/- towards loss of love and affection to the parents, Rs.25,000/- towards funeral expenses, Rs.15,000/- towards loss of estate and Rs.5,000/- towards transportation charges.

7.The total award works out to Rs.52,00,000/- and it will carry interest at the rate of 7.5% p.a. The compensation is apportioned as follows: The two minor children will take Rs.15,00,000/- each with proportionate interest, 1st appellant, the wife will take a sum of Rs.10,00,000/- with proportionate interest and entire costs. The parents will take Rs.6,00,000/- each with proportionate interest. It is stated that the amount awarded by the Tribunal has been deposited before the Tribunal. The Insurance Company is directed to deposit balance amount with interest within a period of six (6) weeks from the date of receipt of a copy of this order. On such deposit, the Tribunal is directed to invest the share of the minors in interest earning Fixed Deposit in any one of the nationalised bank till they attain majority. The 1st respondent would be entitled to withdraw quarterly interest for maintenance of the minors. The appellants shall pay the balance Court fee within a period of two (2) weeks from the date of receipt of a copy of this order, taking into account the award that is now being granted.

8.In fine, the appeal is allowed in part. No costs.

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Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

gsa

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To

The Motor Accidents Claims Tribunal,
Chief Judicial Magistrate,
Chengalpattu.

+1cc to Mr.S.Vadivel, Advocate, S.R.No. 61219
+1cc to Mr. C.Prabakaran, Advocate, S.R.No. 61185

CMA No.2266 of 2016

VSN(CO)
GN(01/11/2018)

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