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.370 of 2016
and
C.M.P.No.2729 of 2016

The Divisional Manager,
National Insurance Company Ltd.,
No.62-A, J.N.Street,
Puducherry. ... Appellant/2nd Respondent

-vs-

1.Sudha
2.Minor Dhanalakshmi
3.Minor Kameshwara
[Minors 2 and 3 are represented by their Mother Sudha as natural guardian and next friend.]
.. Respondents/Petitioner 1 to 3
4.A.Kannan ... Respondent/1st Respondent

Prayer:-

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 to set aside the award passed in MACT OP.No.993 of 2014, dated 03.09.2015, on the file of the Motor Accident Claims Tribunal, 3rd Additional District Court, Puducherry.

For Appellant : Mrs.N.B.Surekha

For Respondents : Mr.V.Udayakumar for R1 to 3

J U D G M E N T

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

The challenge in this appeal is to the award of a sum of Rs.19,90,000/- granted by the Tribunal for the death of one Manikandan in a road accident that occurred on 10.09.2014.

2. Though, the appeal is by the Insurance Company Mrs.N.B.Surekha, learned counsel appearing for the Insurance Company does not dispute the findings of the Tribunal on the question of negligence and liability. The only dispute is with regard to the quantum of compensation awarded by the Tribunal.

3. According to the claimants, the deceased was an auto-rickshaw driver earning Rs.1,200/- per day and the monthly income according to the claimants is about Rs.30,000/-. Based on the said claim the claimants sought for a compensation of Rs.37,75,000/-.

4. Since there was no evidence to show that the deceased possessed a driving license for driving the auto-rickshaw, the Tribunal took his monthly income at Rs.15,000/-, at Rs.500/- per day. After deducting 1/3rd towards personal expenses, applying a multiplier of '16', the Tribunal arrived at the total loss of dependency at Rs.19,20,000/-. The Tribunal also awarded a sum of Rs.10,000/- towards funeral expenses, Rs.10,000/- towards loss of estate, Rs.10,000/- towards transport expenses and Rs.20,000/- towards loss of consortium to the wife and Rs.20,000/- towards loss of love and affection to the two minor children. Thus, in all the Tribunal had awarded a sum of Rs.19,90,000/- as compensation.

5. Mrs.N.B.Surekha, learned counsel appearing for the Insurance Company would contend that the fixation of Rs.15,000/- as monthly income by the Tribunal is on the higher side, considering the date of the accident i.e., 10.09.2014.

6. Per contra Mr.V.Udayakumar, the learned counsel appearing for the claimants would contend that though the Tribunal has taken the monthly income at Rs.15,000/-, it has not taken into account the future prospects. Therefore, according to him, the award amount is wholly just and reasonable.

7. We have considered the rival submissions. As rightly pointed out by the learned counsel for the Insurance Company, the claimants have not produced even the driving license to show that the deceased had a license to drive the auto-rickshaw. However, taking into consideration the fact that the accident took place in the year 2014 and the prevailing cost of living, we are of the considered opinion that his monthly income could be notionally fixed at Rs.8,000/-, adding 40% towards future prospects the monthly income for the purpose of arriving at the loss of dependency would be taken at Rs.11,200/-, deducting 1/3rd towards his personal expenses and applying a multiplier of '15', the total loss of dependency would be Rs.13,44,000/-. The compensation awarded by the Tribunal under the various conventional heads also appears to be on the lower side and the

same is re-fixed as follows:-

Award towards		Amount
Loss of dependency	:	Rs.13,44,000/-
Funeral expenses	:	Rs. 25,000/-
Loss of estate	:	Rs. 15,000/-
Transport expenses	:	Rs. 10,000/-
Loss of consortium	:	Rs. 40,000/-
Loss of love and affection for the two minor children at Rs.40,000/- each	:	Rs. 80,000/-
Pain and sufferings	:	Rs. 50,000/-
Attender charges	:	Rs. 15,000/-
Total	:	Rs.15,79,000/-

8. Though the Tribunal has not awarded any amount towards pain and suffering and attender charges, we find that the deceased has died nearly 12 days after the accident and he has been admitted as in-patient in JIPMER Hospital for atleast 7 days, hence, we have award a sum of Rs.50,000/- towards pain and suffering and Rs.15,000/- towards attender charges. Thus calculated, the total compensation would be Rs.15,79,000/- and the same is rounded off to Rs.15,80,000/-. The award will carry interest at 7.5% per annum.

9. In fine, the appeal is partly allowed. The compensation awarded by the Tribunal is reduced to Rs.15,80,000/-. It is stated that the Insurance Company has already deposited the award amount as per the award of the Tribunal and the 1st claimant has been permitted to withdraw 50% of her share. The award is apportioned as follows:-

i) The 1st claimant, wife would be entitled to Rs.7,80,000/- with proportionate interest and entire costs.

ii) The 2nd and 3rd claimants, minor children would be entitled to Rs.4,00,000/- each with proportionate interest.

10. The Tribunal is directed to deposit the shares of the minor children in an interest bearing fixed deposit in any Nationalized Bank till they attain majority and the 1st claimant is permitted to withdraw quarterly interest from the fixed deposit. The 1st claimant is also permitted to withdraw the remaining part of her share of the compensation. The balance amount shall be paid over to the Insurance Company. No costs.

Consequently, the connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

dsa

To

1. The Motor Accident Claims Tribunal,
   III Additional District Court, Puducherry.

2. The Section Officer,
   VR Section, High Court, Madras (2 Copies)

+1cc to Mr.V.Udayakumar, Advocate in sr.no.64498
+1cc to Mrs.N.B.Surekha, Advocate in sr.no.64444

C.M.A. No.370 of 2016

MR(CO)
CS/02/11/2018