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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.807 of 2015

The Oriental Insurance Co., Ltd.,
C.B.O.4, Kangothiri Complex,
Boring Road, Patna, Bihar,
Third Party HUB, May Flower Buildings,
2nd Floor, 72, Dr.Balasundaram Road,
A.T.T.Colony, Coimbatore. ... Appellant/3rd Respondent

-vs-

1.Victoria Shobana
2.Jefrina Charles
3.Mikhail Joel
4.M.Selvaraj
5.Lourdhumary
6.Rattanlal
7.M/s.Khaitan Logistics Pvt.Ltd.,
B-168, Govind Mark,
Jaipur. ... Respondents/Petitioners/
Respondents 1 & 2

(R2 & R3 declared as major and their mother
Victoria Shobana discharged from the Guardianship
vide order of this Court dated 12.09.2018 and
made in CMA 807 of 2015 and MP No.1 of 2015)

Civil Miscellaneous Appeal filed under Section 173 of the Motor
Vehicles Act, 1988 against the Award and decree dated 21.12.2012
made in M.C.O.P.No.599 of 2011 on the file of the Motor
Accidents Claims Tribunal, III Additional District and Sessions
Judge, Coimbatore.

For Appellant : Mr.S.Arunkumar

For Respondents : Ms.Veena Peter for
M/s.Auxillia Peter for R1 to R5

R6-served - No Appearance
R7-Not ready in notice



J U D G M E N T

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

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Challenging the Award granting a sum of Rs.36,13,000/- as compensation for the death of one S.Charles in a motor accident that occurred on 27.05.2010, the Insurance Company has come up with this appeal.

2. The claimants, who are wife, children and parents of the deceased had claimed that the deceased Charles was carrying on business in fabrication work. Apart from that, he was earning considerable amount by taking music classes and participating in orchestra at regular intervals. Claiming that his death in the accident left the family in shatters, the claimants sought for a compensation of Rs.50 lakhs.

3. The claim was resisted by the Insurance Company by contending that the accident took place due to the negligence of the deceased Charles, who was actually chatting with his wife while driving the car. The Insurance Company would also contend that the compensation claimed is on the higher side. It denied the age, education, qualification and the income of the deceased as set out in the claim petition.

4. The Tribunal on an appreciation of the evidence on record concluded that the accident occurred due to the rash and negligent driving of the lorry bearing Registration No.HR-38-L-8654, which was insured with the appellant Insurance Company. In coming to the said conclusion, the Tribunal had relied upon First Information Report filed immediately after the accident.

5. Mr.S.Arunkumar, learned counsel for the Insurance Company is not challenging the finding of the Tribunal on the question of negligence. On quantum, the Tribunal, taking into account the income tax returns viz., Ex.P7 concluded that the deceased was earning about Rs.3,27,750/- per annum. The Tribunal took the monthly income of the deceased at Rs.25,000/- and adding 20% towards future prospects, the Tribunal arrived monetary loss of dependency at Rs.30,000/-. Deducting 1/4 for his personal expenses, the Tribunal worked out total loss of dependency at Rs.35,10,000/-.

6. We have heard the learned counsel for the appellant and the learned counsel appearing on behalf of respondents 1 to 5.

7. Inviting our attention to the contents of Exs.P7 and P20, Mr.Arunkumar, learned counsel for the appellant would contend that the Tribunal has taken interest income from the deposits



also as a part of the income of the deceased. He would submit that the same cannot be added. He would also submit that after the death of the husband, the wife, namely, the first respondent is continuing the business. Therefore, the entire income cannot be treated to be a loss to the family.

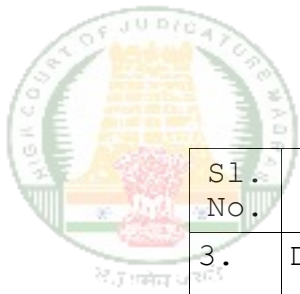
8. Per contra, Mrs.Veena Peter, learned counsel appearing on behalf of the claimants would contend that as per Ex.P7, the total income is Rs.3,27,750/- and the Tribunal has taken only Rs.25,000/- only as monthly income. Therefore, the adoption of Rs.25,000/- as income by the Tribunal cannot be on the higher side.

9. We have considered the rival submissions.

10. We find from Ex.P20, the Income Tax return of the first respondent, wherein, the total income from the business is shown as Rs.3,86,403/-, out of which, Rs.1,36,737/- is shown to be interest on deposits. Therefore, the balance is about Rs.2,49,666/- and that alone can be taken as the income from the business. We are therefore of the considered opinion that the Tribunal was not correct in adopting Rs.3,27,250/- as the annual income of the deceased. If Rs.2,49,666/- is taken as the annual income and adding 25% towards future prospects, the annual income for the purpose of calculating the loss of dependency would be Rs.3,12,082/-. Deducting 1/4 for the personal expenses, the annual loss of dependency would be Rs.2,34,061/-. Since the deceased was aged 48 years at the time of accident, the multiplier to be adopted is "13". Thus worked out, the compensation on the ground of loss of earning capacity is Rs.30,42,793/-. The Tribunal has awarded a sum of Rs.50,000/- towards loss of Love and Affection and Rs.50,000/- towards Loss of Consortium. Though we find that the amount awarded towards loss of Love and Affection is on the higher side, we do not see any reason to interfere with the same. The Tribunal has awarded a sum of Rs.2,000/- towards transportation and Rs.1,000/- towards damages to clothing. Those awards are sustained. The Tribunal has not awarded any amount towards Funeral Expenses and Loss of Estate. Hence, we award a sum of Rs.25,000/- towards Funeral Expenses and Rs.15,000/- towards Loss of Estate.

11. Thus the total compensation is as follows:-

Sl. No.	Head	Awarded by the Tribunal	Awarded by this Court
1	Loss of Earning Capacity	Rs.35,10,000	Rs.30,42,793
2	Transportation	Rs. 2,000	Rs. 2,000



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Sl. No.	Head	Awarded by the Tribunal	Awarded by this Court
3.	Damage to Clothing	Rs. 1,000	Rs. 1,000
4.	Loss of Consortium	Rs. 50,000	Rs. 50,000
5.	Loss of Love and Affection	Rs. 50,000	Rs. 50,000
6	Funeral Expenses	-	Rs. 25,000
7	Loss of Estate	-	Rs. 15,000
		Total	Rs.31,85,793

Rounded off to Rs.32,00,000/-

12. In the result, the Civil Miscellaneous Appeal is allowed in part as follows:-

(i) The award of the Tribunal is modified and reduced from Rs.36,13,000/- to Rs.32,00,000/-

(ii) The award amount will carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit with proportionate costs.

(iii) The compensation is apportioned as follows:-

a) The first respondent - wife of the deceased will be entitled to Rs.10,00,000/- with proportionate interest and entire costs.

b) The respondents 2 and 3 - children of the deceased will be entitled to Rs.9,00,000/- each with proportionate interest.

c) The respondent 4 and 5 - parents of the deceased will be entitled to Rs.2,00,000/- with proportionate interest.

iv) It is stated that the Insurance Company has deposited the entire amount and the major claimants have been permitted to withdraw 50% of the amount. It is seen that the minor claimants have also now attained majority. Hence, they will also be entitled to withdraw their share of the compensation.



v) While allowing the minors to withdraw their share of the compensation, the Tribunal will ensure apportionment of compensation as stated above.

vi) The remaining amount is to be paid over to the appellant Insurance Company.

No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

svki

To

The Motor Accidents Claims Tribunal,
III Additional District and Sessions Judge, Coimbatore.

Copy To:

The Section Officer,
V.R.Section,
High Court, Madras.

+1 cc to M/s.S.Arunkumar, Advocate Sr.No.63622
+1 cc to M/s.auxillia Peter, Advocate Sr.No.63772

CMA No.807 of 2015

CSL/21.12.2018