IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2018

CORAM

THE HONOURABLE MR. JUSTICE R. SUBBIAH
AND
THE HONOURABLE MR. JUSTICE P.D. AUDIKESAVALU

C.M.A. No. 1802 of 2014
&
M.P. No. 1 of 2014

M/s. Shriram General Insurance
Company Limited,
City Centre Complex, 2nd Floor,
No.66, Thirumalai Pillai Road,
T. Nagar, Chennai - 600 017. ..Appellant

Vs.

1. Kalaivani
2. Dharshini (Minor)(Represented by her mother 1st respondent)
3. M. Kasthuri
4. V. Murugesan
5. T. Ellapan

(Fifth respondent remained ex parte in Lower Court and hence, notice to fifth respondent may kindly be dispensed with) ..Respondents

Prayer: Civil Miscellaneous Appeal as against the order and decree dated 09.07.2013 passed in M.C.O.P. No. 4129 of 2011 by the Motor Accidents Claims Tribunal (IV Court of Small Causes), Chennai.

For Appellant :: Mr.B. Murugavel

For Respondents:: Mr.K. Varadhakamaraj for R1 to R4

J U D G M E N T

(Judgment of the Court was delivered by R. SUBBIAH,J.)

This Civil Miscellaneous Appeal has been filed challenging the quantum of compensation awarded by the Motor Accidents Claims Tribunal (IV Court of Small Causes), Chennai, in and by award dated 09.07.2013 in M.C.O.P. No. 4129 of 2011.

2. The claimants before the Tribunal, who are respondents 1 to 4 herein, are the wife, minor daughter, mother and father of the deceased, namely, M. Santoshkumar, respectively.

3. Since the present appeal has been filed questioning only the quantum of compensation awarded by the Tribunal, it is not necessary for this Court to traverse into other aspects of the award.

4. With regard to the quantum of compensation, it is the case of the claimants/respondents 1 to 4 before the Tribunal that the deceased, was a painter by avocation and was earning a sum of Rs.12,000/- per month. In order to prove the income of the deceased, his wife was examined as P.W.4. However, considering the fact that except the oral testimony of P.W.4, no other tangible proof had been produced by the claimants to prove the income earned by the deceased, the Tribunal fixed the income of the deceased at Rs.8000/- per month and considering the number of dependants, deducted one-fourth towards "Personal Expenses" of the deceased, i.e, (Rs. 8000/- (-) ¼ (Rs.8000/-) and arrived at Rs.6000/- as "Loss of Income" per month. But, the learned counsel for the appellant would contend that when there is no documentary proof to substantiate the claim with regard to the income earned by the deceased, the Tribunal ought not to have taken Rs.8000/- as the monthly income solely based on the oral testimony of P.W.4. Therefore, the monthly income of the deceased fixed at Rs.8000/- has to be reduced and accordingly, the amount awarded by the Tribunal has to be modified.

5. Per contra, learned counsel for respondents 1 to 4/claimants would support the award passed by the Tribunal.

6. We have heard the learned counsel on either side and have also carefully gone through the materials on record.

7. The only grievance of the appellant is that the sum of Rs.8000/- fixed by the Tribunal, as the monthly income of the deceased is on the higher side and therefore, appropriate reduction has to be made in regard thereto, in the absence of any substantive evidence. Taking into account, the cost of living prevailing as on date, it cannot be said that the monthly income fixed by the Tribunal is excessive. Rather, it has to be said that the Tribunal, awarding a sum of Rs. 12,96,000/- towards "Loss of Dependency" by fixing a sum of Rs.8000/-per month as the income of the deceased and deducting one-fourth towards "Personal Expenses" and adopting multiplier 18, based on his age, namely, 26 years, is reasonable. Besides, the Tribunal has awarded a sum of Rs. 50,000/- towards "Loss of Consortium" to the 1st respondent/wife, Rs.25,000/- towards "Loss of Love and

Affection" to the minor daughter/2nd respondent, Rs.30,000/- towards "Loss of Love and Affection" to respondents 1, 3 and 4 and Rs.10,000/- for "Funeral Expenses", which are also just and reasonable. In all, a sum of Rs.14,11,000/- has been granted by the Tribunal, which, in our considered opinion, cannot be said to be on the higher side. Hence, we are not inclined to interfere with the award passed by the Tribunal. Accordingly, the Civil Miscellaneous Appeal stands dismissed. No costs. Connected M.P. is closed.

8. Since it is submitted by the learned counsel for the appellant that the entire award amount has been deposited together with interest and costs, respondents 1, 3 and 4 are permitted to withdraw their respective shares as per the apportionment of the Tribunal. The share of the minor daughter/2nd respondent shall be invested by the Tribunal in any one of the Nationalised Banks in interest bearing Fixed Deposit till she attains majority and the 1st respondent is permitted to withdraw the interest accruing on such deposit once in three months.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

To

The MACT (IV Court of Small Causes)
Chennai.

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The Record Keeper,
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Madras.

+1cc to Mr.K. Varadhakamaraj, Advocate sr.no.1188

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