IN THE JUDICATE OF MADRAS HIGH COURT

Reserved on : 08.01.2018

Pronounced on : 30.01.2018

CORAM

THE HON'BLE MR.JUSTICE R.SUBBIAH
and
THE HON'BLE MR.JUSTICE P.D.AUDIKESAVALU

C.M.A.No.1957 of 2014
and
M.P.No.1 of 2014

National Insurance Company Limited,
Branch Office,
63, Rasi Plaza, West,
Pradhakshinam Road,
Karur-639 002. ... Appellant/3rd Respondent

Vs.

1.Nachimuthu (died)
2.Pushpalatha
3.Minor Raghul
4.Minor Sajay

5.Saravanan
6.Mohanraj ... Respondents /Petitioners 1 to 4/ Respondents 1 and 2

Civil Miscellaneous Appeal has been been filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 13.11.2013 in M.A.C.T.O.P.No.1264 of 2007 passed by the Motor Accidents Claims Tribunal (II Additional District Judge), Tiruppur.

For Appellants : Ms.W.B.Surekha
For Respondents : Mr.Ma.P.Thangavel (For R2 to R4)

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

Challenging the quantum of compensation awarded by the Motor Accidents Claims Tribunal (II Additional District Judge), Tiruppur, in and by award dated 13.11.2013 in M.C.O.P.No.1264 of 2007, the Insurance Company has filed the present appeal.

2.The claim petition was filed by the respondents 1 to 4 herein, who are father, wife and minor children of the deceased Ramasamy, who had died in a motor accident that had occurred on 09.09.2007, involving a Omni van bearing Reg.No.TN-47-L-3636 owned by the 6th respondent insured with the appellant/Insurance Company. Pending the claim petition before the Tribunal, the father of the deceased (1st respondent herein) died.

3.Since the present appeal has been filed only questioning the quantum of compensation, We are not dealing with the other aspects of the award passed by the Tribunal.

4.So far as the quantum of compensation is concerned, it is the case of the claimants before the Tribunal that the deceased Ramasamy was working as a Supervisor in Sri Subasri Garments Baniyan Company and earning a sum of Rs.10,000/- per month. Before the Tribunal, in order to prove the income earned by the deceased Ramasamy, on the side of the claimants, the wife of the deceased (2nd claimant Pushpalatha) examined herself as P.W.1 besides examining two others as P.W.2 & P.W.3 and marked 11 documents as Ex.P.1 to Ex.P.11. On the side of the Insurance Company, a Senior Clerk of the Insurance Company viz., one Krishnamoorthy was examined as R.W.1 and four documents were marked as Ex.R.1 to Ex.R.4. That apart, the Deputy Zonal Tahsildar viz., one Murugan was examined as a Court Witness and through him, Ex.C.1 was marked.

5.The Tribunal, after analysing the entire evidence, by applying unit theory and by applying multiplier method, has awarded a sum of Rs.21,60,000/- under the head of loss of income. That apart, the Tribunal has awarded a sum of Rs.50,000/- for loss of consortium and a sum of Rs.1,50,000/- for loss of love and affection and a sum of Rs.5,000/- for funeral expenses. Thus, the Tribunal has passed an award for a total sum of Rs.23,65,000/- as compensation.

6.Now, it is the submission of the learned counsel appearing for the appellant/Insurance Company that in order to prove the income earned by the deceased, absolutely no tangible evidence was produced on the side of the claimants; under such circumstances, the Tribunal ought not to have fixed a sum of Rs.10,000/- as monthly income of the deceased. Since the Tribunal has fixed a higher sum of Rs.10,000/- as monthly income and applied the higher multiplier of 18, it resulted in awarding an exorbitant amount of Rs.21,60,000/- under the head of loss of income alone. In this regard, the learned counsel for the appellant/Insurance Company submitted that at the time of accident, the deceased was aged only 38 years and the correct multiplier that has to be applied is 15 as per the judgment of the Hon'ble Supreme Court in the case of Sarala Verma Vs. Delhi Transport Corporation [2009-5-LW 561]. Further, it is the submission of the learned counsel for the appellant/Insurance Company that the father of the deceased also died during the pendency of the claim petition and the father of the deceased cannot be considered as a dependent. Under such circumstance, the Tribunal ought to have deduced 1/3rd amount towards personal expenses, but, the Tribunal has deducted only 1/4th amount towards personal expenses. Thus, it is the submission of the learned counsel for the appellant/Insurance Company that by fixing a lessor amount as monthly income of the deceased and by applying the correct multiplier 15 and by deducting 1/3rd amount towards personal expenses, the compensation amount awarded by the Tribunal has to be recalculated.

7.Per contra, the learned counsel for the claimants submitted that in order to prove the income earned by the deceased on the side of the claimants, one Gowrishankar who has been working as Accountant in Sri Subasri Garments Baniyan Company, was examined as P.W.3 and he had categorically stated in his evidence that the deceased Ramasamy was working in the said company as Production Supervisor and receiving Rs.10,000/- as monthly salary. Salary receipts were marked as Ex.P.7 (series) and Salary Certificate was marked as Ex.P.10. The Tribunal by relying upon the said documents had fixed a sum of Rs.10,000/- as monthly income and hence, the monthly income fixed by the Tribunal needs no reduction. Further, the learned counsel for the claimants would submit that at the time of filing the claim petition, the father of the deceased was alive, therefore, it would be proper to deduct 1/4th amount instead of 1/3 amount, towards personal expenses of the deceased. Thus, the learned counsel for the claimants sought for dismissal of the appeal.

8.Keeping in view the submissions made on either side, We have carefully gone through the entire materials available on record.

9.It is the main contention of the learned counsel for the appellant/Insurance Company that the sum of Rs.10,000/- fixed by the Tribunal as monthly income of the deceased is without any basis and therefore, by reducing the same, the amount awarded by the Tribunal under the head of loss of income has to be recalculated. But, on perusal of the materials available on record, We find that in order to prove the income earned by the deceased, on the side of the claimant, the Accountant from Sri Subasri Garments Baniyan Company, in which the deceased was working, was examined as P.W.3, through whom salary receipts (Ex.P.7) and Salary Certificate (Ex.P.9) were marked. From

Ex.P.7 & Ex.P.9, it could be seen that the deceased was receiving a monthly salary of Rs.10,000/-. Therefore, We are not inclined to reduce the monthly income fixed by the Tribunal.

10.But, at the same time, We find that the Tribunal has applied multiplier 18. At the time of death, the deceased Ramasamy was aged 38 years. As per the above referred decision of the Hon'ble Supreme Court, the correct multiplier that has to be applied in the case of age group between 36 to 40 years is 15. Therefore, in the instant case, as the deceased was aged 38 years at the time of accident, the correct multiplier that has to be applied is 15.

11.Further, it is the contention of the learned counsel for the claimants that only 1/4th amount has to be deducted towards personal expenses. But, in our considered opinion, father of the deceased cannot be considered as a dependant for the purpose of making calculation for compensation. In this regard, a reference could be placed in the recent decision of the Constitutional Bench of the Hon'ble Supreme Court reported in 2017(2) TN MAC 609 (SC) [National Insurance Co. Ltd. Vs. Pranay Sethi], wherein it has been held that the mother of the deceased alone will be considered as a dependant and not the father of the deceased. In the instant case, it is seen that the father of the deceased also died during the pendency of the claim petition before the Tribunal. Hence, We are of the opinion that in the instant case, only 1/3rd amount has to be deducted towards personal expenses, as contended by the learned counsel for the appellant/Insurance Company.

12.As stated supra, the sum of Rs.10,000/- fixed by the Tribunal as monthly income of the deceased is the reasonable amount, which is supported by Salary receipts and Salary Certificate, Ex.P.7 & Ex.P.10 respectively. If the sum of Rs.10,000/- is taken as monthly income, 40% of the amount has to be added as future prospects. If added so, then the total works out to Rs.14,000/- (10,000 + 4,000). Then, the annual income works out to Rs.1,68,000/- (14,000 x 12). If 1/3rd amount is deducted, the balance amount comes to Rs.1,12,000/- (1,68,000 - 56,000). If multiplier 15 is applied on the basis of the age of the deceased Ramasamy who was aged 38 years at the time of death, the total loss of income works out to Rs.16,80,000/- (1,12,000 x 15). Hence, the compensation amount of Rs.21,60,000/- awarded by the Tribunal under the head of loss of income is hereby reduced to Rs.16,80,000/-.

13.That apart, the Tribunal has awarded a sum of Rs.50,000/- for loss of consortium. As per the decision of the Hon'ble Supreme Court cited supra, only a sum of Rs.40,000/- can be awarded for loss of consortium. Hence, the sum of

Rs.50,000/- awarded by the Tribunal for the loss of consortium is hereby reduced to Rs.40,000/-. However, since the sum of Rs.5,000/- awarded by the Tribunal for funeral expenses appears to be on the lower side, the same is hereby enhanced to Rs.15,000/-. As the sum of Rs.1,50,000/- awarded by the Tribunal for the loss of love and affection to the claimants at the rate of Rs.50,000/- each, appears to be very reasonable, the same is hereby confirmed.

14.Accordingly, the total compensation amount of Rs.23,65,000/- awarded by the Tribunal is hereby modified/reduced to a sum of Rs.18,85,000/-. The break up details of the modified/reduced compensation amount are as follows_

Loss of income	:	Rs. 16,80,000/-
Loss of love and affection	:	Rs. 1,50,000/-
Loss of Consortium	:	Rs. 40,000/-
Funeral expenses	:	Rs. 15,000/-
Total		Rs. 18,85,000/-

15.In fine, the appeal is partly allowed and the total compensation amount of Rs.23,65,000/- (Rupees Twenty Three Lakhs and Sixty Five Thousand Only) awarded by the Tribunal is hereby modified/reduced to a sum of Rs.18,85,000/- (Rupees Eighteen Lakhs and Eighty Five Thousand Only). The appellant/Insurance Company is directed to deposit the entire modified/reduced compensation amount, with interest at the rate 7.5% per annum from the date of claim petition till the date of deposit, after deducting the amount if any already deposited, within four weeks from the date of receipt of a copy of this order. On such deposit being made, the 2nd claimant/wife is entitled to withdraw Rs.10 lakhs, with proportionate interest, by making necessary applications before the Tribunal. So far the minor claimants 3 & 4 are concerned, they are entitled to equal share in the balance amount and their share amounts shall be deposited in any one of the nationalised banks till they attain majority and their mother 2nd claimant is entitled withdraw the interest accrued thereon once in three months.

Consequently, connected Miscellaneous Petition is closed.

No costs.

Sd/-
Assistant Registrar(CS V)

//True copy//

Sub Assistant Registrar

ssv

To,

1.The Motor Accidents Claims Tribunal,
(IIAdditional District Judge), Tiruppur.

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

+1cc to Mr.Ma.P.Thangavel, Advocate SR.No.6770
+1cc to Mr.N.B.Surekha, Advocate SR.No.747

C.M.A.No.1957 of 2014
and
M.P.No.1 of 2014

AK(CO)
GN(06/03/2018)