IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 21.06.2018
CORAM
THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN
AND
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY
C.M.A.No. 517 of 2018
&
Cross-Objection NO. 33 of 2018

M/s.SBI General Insurance Company Limited,
Greams Dugar Building, Ground Floor,
No.64, Greams Road,
Chennai -600 006. ..Appellant/1st respondent in Cross-Objection/2nd Respondent

Vs.

1. Sumathi ..1st respondent in appeal/Cross-Objector/Petitioner

2. Kudumala Venkatachalapthi Reddy ..2nd Respondent in both appeal as well as Cross-Objection./1st respondent

Prayer: Civil Miscellaneous Appeal as against the judgment and decree dated 10.11.2017 passed in M.C.O.P. No. 5506 of 2014 by the Motor Accidents Claims Tribunal (Chief Court of Small Causes), Chennai.

For Appellant/1st respondent in Cross-Objection :: Mr.Mohan Babu for M/s.M.B. Gopalan Associates

For 1st Respondent/Cross-Objector :: Mr.Chidambaram for Mr.K. Varadhakamaraj

J U D G M E N T

(Judgement of the Court was delivered by N.KIRUBAKARAN,J.)

This Civil Miscellaneous Appeal has been filed by the Insurance Company aggrieved over the quantum of compensation of Rs.13,90,800/- for the death of one Ashok, aged about 23 years, alleged to be doing Customs Clearing Work in Trans Asia Shipping Service and earning about Rs.10,000/- per month, in the accident, which occurred on 10.01.2014, when the motor cycle driven by the deceased was hit down by a lorry belonging to the 2nd respondent and insured with the Insurance Company.

2. Heard Mr.Mohan Babu, learned counsel for the appellant and Mr.Chidambaram representing Mr.K. Varadhakamaraj, learned counsel for the claimant.

3. The claimant has also preferred a cross-objection as against the award of the Tribunal.

4. The appeal is directed against the quantum of compensation alone.

5. Learned counsel for the Insurance Company would submit that in the absence of any document regarding the income of the deceased, the Tribunal committed an error by fixing Rs.9000/- as the monthly income and therefore, he seeks to reduce the amount.

6. However, learned counsel for the claimant would plead for enhancement stating that the deceased was earning about Rs.10,000/- per month, but the same was not considered by the Tribunal.

7. It is evident from the records that there is neither any documentary evidence filed by the claimant to prove that the deceased was working as a Customs Clearing Worker in Trans Asia Shipping Service nor any oral evidence adduced in regard thereto. Therefore, the Tribunal determined the monthly income of the deceased as Rs.9000/-. However, during 2012, it would have been difficult to employ a servant maid for salary less than Rs.10,000/- and therefore, instead of Rs.9000/- fixed by the Tribunal as the monthly income of the deceased, this Court re-determines the monthly income at Rs.10,000/-.

8. The age of the deceased is proved to be 23 years, by Ex-P5 postmortem certificate and therefore, 40% has to be added towards "Future Prospects" following the judgment of the Constitution Bench of the Honourable Apex Court in Pranay Sethi's case (2017 ACJ 2700). Accordingly, adding 40%, the "total monthly income" of the deceased comes to,

Monthly Income	::Rs.10,000/-
Add: 40% towards "Future Prospects"	::Rs.10,000/-(+) 40%(Rs.10,000/-)
Total Monthly Income	:: Rs.14,000/-

Since the deceased was a bachelor, 50% has been deducted towards " Personal Expenses" by the Tribunal. However, it is contended by the learned counsel for the claimant that only one-third has to be deducted when the dependant is a widowed mother as per the judgment of the Honourable Supreme Court in Sarla Verma's case (2009 (2) SCC 121). Admittedly, the sole claimant is the widowed mother of the deceased and therefore, one-third is deducted towards "Personal Expenses" instead of 50% as usually done in the case of a bachelor. Therefore, deducting one-third,

Total Monthly Income :: Rs.14,000/-

Less: 1/3rd towards "Personal Expenses":: Rs.14,000/- (-) 1/3 (Rs.14,000/-)

Monthly Contribution :: Rs.9333/-

As per the age of the deceased, the appropriate multiplier is 18, which was rightly adopted by the Tribunal. Therefore, applying the same,

" Loss of Income" is calculated as hereunder:

Loss of Income :: Rs.9333 x 12 x 18

:: Rs.20,15,928/-

The sum of Rs.15,000/-each awarded towards " Loss of Estate" and " Funeral Expenses" is confirmed. No amount was awarded towards "Transport Charges". Hence, a sum of Rs.5000/- is awarded. The total compensation payable comes to Rs.20,50,628/- rounded off to Rs.20,50,000/-. The rate of interest awarded by the Tribunal @ 7.5% per annum remains unaltered. The claimant shall pay additional court-fee for the enhanced amount, if any, within a period of two weeks from the date of receipt of a copy of this order.

9. The Insurance Company is directed to deposit the entire award amount, as per the modified award passed by this Court, with interest and costs, after deducting the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the entire amount to the bank account of the claimant through RTGS, within a period of one week thereon.

10. In the result, the Civil Miscellaneous Appeal filed by the Insurance Company is dismissed and the Cross-Objection filed by the claimant is partly allowed. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To
The MACT (Chief Court of Small Causes), Chennai.

+1cc to Mr.K.Varadhakamaraj, Advocate, S.R.No.39024
+1cc to Mr.M.B.Gopalan Associates, Advocate, S.R.No.40094

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NRI(CO)
GSP(31/07/2018)