IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 12-03-2018

CORAM

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.525 OF 2018

M/s.Reliance General Insurance Co.Ltd .... Appellant/
No.628 Anna Salai 2nd Respondent
Chennai 600 002

-vs-

1.R.Chandra
2.V.Vidhya
3.V.Vijay
4.S.Mohan ...Respondents/
Petitioners

Appeal against the award, dated 16.04.2014, passed in M.C.O.P.No.2058 of 2012, on the file of Motor Accident Claims Tribunal, III Court of Small Causes, Chennai.

For appellant : Mr.M.B.Gopalan
For respondents 1 to 3 : Mr.S.Gangaram Prasad

JUDGMENT

Aggrieved over the quantum of compensation awarded by the Motor Accident Claims Tribunal, III Court of Small Causes, Chennai, in M.C.O.P.No.2058 of 2012, dated 16.04.2014, the insurance company has preferred this appeal.

2. According to the appellant-insurance company, the loss of income of the deceased was calculated by the Tribunal at Rs.16,000/- per month, without there being any acceptable proof of occupational income, except the pension, which continued to accrue to the family.

3. The claimants-respondents 1 to 3 have preferred the claim petition on the death of one V.Venkataraman, who is the husband of the first claimant and father of claimants 2 and 3. According to them, the deceased was a retired Accounts Officer in Tamil Nadu Electricity Board and was drawing pension. Apart from that, he was doing real estate business and earning a sum of Rs.9,000/- per month from it. Based on that, they have

claimed a sum of Rs.15,000/- per month, as loss of income.

4. In order to prove their case, the claimants have examined P.Ws.1 to 3 and marked Exs.P-1 to P-13. Ex.P-8 is the statement of account from the bank. Ex.P-9 is the Family Pension Order and it is corroborated by the evidence of P.W.1, the first claimant. Since the manner of accident and liability are not questioned, this Court considers the issue of quantum alone.

5. The Tribunal has found that Ex.P-8 Bank Pass Book shows that the deceased received a sum of Rs.16,699/- as pension for the month of January,2011. Ex.P-9 family pension order shows that the wife of the deceased received a pension of Rs.11,716/- as family pension. Therefore, it is proved that the first claimant was receiving a sum of Rs.11,716/- per month towards family pension. The Tribunal relied on a judgment in Binapani Ghosh and Others v. New India Insurance Co.Ltd., 2013 ACJ 2525, wherein, the High Court of Calcutta has held that family pension cannot be deducted as a benefit arising out of the accidental death of the husband. Considering the same, the amount was not duducted. The Tribunal has fixed the monthly income of the deceased at Rs.16,000/- per month.

6. Learned counsel for the appellant would vehemently contend that loss of pension, which is continuously paid to the family, cannot be considered as loss of income and, therefore, the Tribunal is wrong in calculating Rs.16,000/- as monthly income of the deceased.

7. This Court is also of the opinion that family pension being received by the family cannot be considered as loss of income. In so far as the income from the other source i.e., real estate business is concerned, there is oral evidence and, in the absence of any contra evidence in this aspect, it should also be taken into account.

8. Controverting the arguments made by the learned counsel for the appellant, learned counsel for the respondents/claimants would contend that even the reduced pension as per Ex.P-9 should be considered, as there is documentary evidence to that effect. Accordingly, a sum of Rs.7693/- per month shall be taken into consideration, as the pension payment order is a public document. Further, the evidence of P.W.1 was uncontroverted. Therefore, this Court is of the opinion that a sum of Rs.4307/- be taken as the notional income from the real estate business, which a person, in normal circumstances, would easily earn. Accordingly, the monthly income of the deceased has been fixed at Rs.12,000/- (Rs.7693 + 4307). After deducting 1/3 towards personal and living expenses, the balance comes to Rs.8,000/- (Rs.12000-4000). Thus, the loss of income is calculated at Rs.96,000/- per annum (Rs.8000x12). Since the deceased was aged 67 years, the

Tribunal has rightly adopted the multiplier of 5. Therefore, the total loss of income has been calculated at Rs.4,80,000/- (Rs.96000x5). The quantum of compensation is reworked as under :

Loss of income	-	Rs.4,80,000/-
Loss of consortium	-	Rs. 40,000/-
Funeral expenses	-	Rs. 15,000/-
Loss to estate	-	Rs. 15,000/-
Transport to hospital	-	Rs. 10,000/-
Damage to clothing & articles	-	Rs. 5,000/-
Medical expenses	-	Rs.1,40,215/-
Pain & Suffering	-	Rs. 30,000/-
TOTAL	-	Rs.7,35,215/-

9. Thus, the quantum of compensation awarded by the Tribunal is reduced from Rs.9,05,215/- to Rs.7,35,215/-. The claimants are entitled to a sum of Rs.7,35,215/- with interest at the rate of 7.5% per annum, as ordered by the Tribunal.

10. Learned counsel for the appellant would submit that they have already deposited the entire award amount. In such an event, the appellant is entitled to withdraw the excess amount deposited by them with proportionate interest. Respondents/claimants are entitled to withdraw the modified quantum of compensation, as mentioned above, along with accrued interest.

11. Civil Miscellaneous Appeal is disposed of as above. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

dixit

To

Motor Accident Claims Tribunal,
III Court of Small Causes,
Chennai.

copy to
The Section Officer
VR Section
High Court Madras

+1 cc to M/s.Gangaram prasad Advocate sr 18316
+1 cc to Mr.M.B.Gopalan Advocate sr 18932

C.M.A.No.525 OF 2018

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