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.552 of 2018

1. D.Raja

2. R.Dhanalakshmi ... Appellants/Petitioners

-vs-

1. M/s. St. Peter And Paul Sea Food,
No.11-A New Thiruvallur Nagar,
Kasimedu, Royapuram, Chennai 13.

2. L & T General Insurance Co Limited,
Regd. Office, L & T House, M.M. Marg,
Balard Estate, Mumbai 400 001. ...Respondents/Respondents

Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 08.12.2017 made in MCOP.No.8343 of 2015 on the file of the Motor Accident Claims Tribunal, (Chief Judge, MCOP Tribunal), Chennai.

For Appellants : Mr. R.Nalliyappan
For Respondents: Ms.Harini
for M/s.M.B.Gopalan Associates for R2

No appearance for R1

J U D G M E N T
[Judgment of the Court delivered by R.SUBRAMANIAN,J.]

The claimants who are the parents of one Diwakar, who died in the motor accident that occurred on 30.09.2015 are the appellants. The said Diwakar, who was aged about 26 years met with the road accident, when lorry bearing Registration No. TN 04 AK 4144, dashed against the motor cycle which the deceased was riding.

2. Though, the Insurance Company resisted the claim petition contending that there was negligence on the part of the rider of

the motor cycle, the Tribunal found that the accident occurred due to the rash and negligent driving of the lorry driver alone. The Tribunal granted compensation of Rs.13,15,200/-. The Insurance Company has not questioned the award.

3. We have heard Mr.R.Nalliappan learned counsel appearing for the appellant and Ms.Harini, learned counsel appearing for M/s.M.B.Gopalan Associates, for the 2nd respondent Insurance company.

4. The deceased was a traditional fisher man and had a license to do marine work. The identity card issued by the Central Government's Agriculture Department, has been produced as Ex.P5. Though, it is claimed that the deceased owned a fishing boat, no documentary evidence has been produced in proof of the same. The Tribunal had taken monthly income at Rs.9,000/- adding 40% towards future prospects and deducting 50% towards personal expenses, the Tribunal has arrived at the monthly pecuniary loss at Rs.6,300/-. Adopting a multiplier of 17, the Tribunal arrived at the total loss of dependency as Rs.12,85,200/-. The Tribunal awarded Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses. Thus, the total award worked out to Rs.13,15,200/-.

5. Mr.R.Nalliyappan, learned counsel appearing for the appellant would vehemently contend that the Tribunal was not right in taking the income at 300/- per day. He would submit that, considering the fact that the deceased was a traditional fisher man, the Tribunal should have taken the income atleast Rs.15,000/-.

6. Per contra, Ms.Harini, learned counsel appearing for the Insurance company would contend that in the absence of any documentary evidence to show the income, the Tribunal was right in fixing the income at Rs.9,000/-. The fact that the deceased was a traditional fisher man and he had identity card to engage in marine fishing is not in dispute. Taking into account the occupation of the deceased we find that the fixation of Rs.9,000/- as monthly income is below par. The accident occurred in the year 2015, we are, therefore, of the opinion that the Tribunal should have fixed the monthly income at Rs.12,000/- adding 40% towards future prospects and deducting 50% towards personal expenses, the monthly loss of dependency would be Rs.8,400/-. Adopting a multiplier of 17, the total loss of dependency is arrived at Rs.17,13,600/-. The Tribunal has not granted any amount under the head of loss of love and affection. We are of the view that the parents of the deceased will be

entitled to atleast Rs.40,000/- each towards loss of love and affection. Therefore, a sum of Rs.80,000/- is awarded towards loss of love and affection. The Tribunal has awarded a sum of Rs.15,000/- towards funeral expenses, the same is increased to Rs.25,000/-. The award of Rs.15,000/- towards loss of estate is confirmed. A sum of Rs.5,000/- is awarded towards damage to clothing and other articles. Thus, the total award comes to Rs.18,38,600/-. The same is rounded off to 18,40,000/-. The appeal is partly allowed.

7. Accordingly, the modified award is as follows:

S.No.	Heads	Amount
1.	Towards loss of dependency	Rs. 17,13,600/-
2.	Towards loss of love and affection to the parents appellants	Rs. 80,000/-
3.	Towards funeral expenses	Rs. 25,000/-
4.	Towards loss of estate	Rs. 15,000/-
5.	Towards damage to clothing and other articles	Rs. 5,000/-
	TOTAL	Rs.18,38,600/-

The same is rounded off to Rs.18,40,000/-.

8. It is stated that the Insurance Company deposited the amount as awarded by the Tribunal, the Insurance Company is directed to deposit the balance amount within a period of 6 weeks. The enhanced award will carry interest at 7.5% per annum from the date of petition till the date of payment. On such deposit, the claimants parents will be entitled to withdraw the same. The award is apportioned as follows:

The mother of the deceased, namely the second appellant will take a sum of Rs.12,00,000/-, and the father of the deceased, the 1st appellant will take a sum of Rs.6,40,000/- with proportionate interest and costs. There will be no order as to costs.

-s/d-
Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

jv

To

The Motor Accidents Claims Tribunal,
Chief Judge, MCOP Tribunal,
Chennai.

Copy to

The Section officer
VR Section, High Court, Madras 104.

+1 CC to Mr.R. Nalliyappan, Advocate sr 63736.
+1 CC to M/s.B. Gopalan Associates sr 64250

CMA.No.552 of 2018

SSI(CO)
SP(12/11/2018)