IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CMA No.2823 of 2017
and C.M.P.No.16128 of 2017

United India Insurance Co. Ltd.,
No.48, Arcot Road,
Saligramam, Chennai 93. .... Appellant/2nd Respondent

-vs-

1.P.Jayalakshmi
2.Minor P.Kamali Praseetha
3.Minor P.Divyadharshini
4.Minor P.Mugesh Visva ...R1 to R4/1 to 4 Claimants
M.Suryagandhi (Deceased)
(Minors represented by their
mother, 1st respondent)
5.M.Deivanai .... Respondent 5/1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, 1988 against the judgment and decree dated 10.11.2016 passed in M.C.O.P.No.4 of 2016 on the file of the Motor Accidents Claims Tribunal, III Additional District Court, Poonamallee.

For Appellant :Mr.S.Arun Kumar

For Respondents:Mr.K.Varadhakamaraj (For R1 to R4)

For R5 : Exparte

J U D G M E N T

[Judgment of the Court was delivered by R.SUBRAMANIAN,J.]

The Insurance Company is on appeal against the award, granting a sum of Rs.42,07,592/- as compensation for the death of one Prakash in a motor accident that occurred on 10.09.2015.

2.Claiming that the said Prakash was working with Rajiv Gandhi National Institute of Youth Development and drawing a salary of Rs.29,751/-, the claimants sought for a compensation of Rs.60,00,000/-. The Tribunal upon consideration of the

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

evidence, fixed the monthly income at Rs.26,268/-. After deducting ¼ towards his personal expenses, fixed the monthly loss of dependency at Rs.19,701/-. The Tribunal fixed the loss of annual dependency at Rs.2,36,412/-. Applying the multiplier of '16', the Tribunal arrived at the total loss of dependency at Rs.37,82,592/-. The Tribunal also awarded a sum of Rs.3,00,000/- towards loss of love and affection for the 3 children and Rs.1,00,000/- towards loss of consortium and Rs.25,000/- towards funeral expenses. Thus, the total award works out to Rs.42,07,592/-.

3.We have heard Mr.S.Arun Kumar, learned counsel for the Insurance Company and Mr.K.Varadhakamaraj, learned counsel for the respondents 1 to 4/ claimants. The 5th respondent who is the owner of the vehicle was set exparte before the Tribunal, hence notice to her is dispensed with.

4.Mr.S.Arun Kumar, learned counsel for the Insurance Company would contend that the Tribunal erred in fixing the monthly income at Rs.26,268/- in as much as the salary certificate filed as Ex.P7 would show that the take home salary is only Rs.11,255/-.

5.Per contra, Mr.K.Varadhakamaraj, learned counsel for the claimants would contend that the deductions are all statutory deductions which would accrue to the dependants of the deceased in the future. Therefore, the Tribunal was right in taking the income at Rs.26,268/-.

6.The Bank statement of the deceased is also produced which shows that the amount deposited as salary keeps fluctuating between Rs.11,000/- and Rs.20,000/-. We are therefore of the opinion that the monthly income would be safely adopted at Rs.18,000/-. Adding 40% towards future prospects, the monthly income would be Rs.25,200/-. Deducting ¼ towards personal expenses and applying the multiplier '15' as per the judgment of the Hon'ble Supreme Court in Sarala Varma & Other Vs. Delhi Transport Corporation & another reported in 2009 6 SCC 121, the total monetary loss works out to Rs.34,02,000/-. The Tribunal has awarded a sum of Rs.1,00,000/- towards loss of love and affection, which is on the higher side. Considering the fact that the deceased had three minor children at the time of accident, the compensation for loss of love and affection is fixed at Rs.1,20,000/- at the rate of Rs.40,000/- per child. The loss of consortium awarded at Rs.1,00,000/- is reduced to Rs.40,000/-. The award of Rs.25,000/- towards funeral expenses is sustained. The Tribunal has not awarded any amount towards loss of estate. Hence, Rs.15,000/- is awarded towards loss of estate and Rs.5,000/- towards transportation charges.

https://hcservices.ecourts.gov.in/hcservices/

7.Thus, the total award amount is worked out at Rs.36,07,000/- which is rounded off to Rs.36,10,000/- with interest at the rate of 7.5% per annum. The award is apportioned as follows: The wife will be entitled to Rs.12,10,000/- with proportionate interest and entire costs and the respondents 2 to 4/children will each take Rs.8,00,000/- with proportionate interest. It is stated that the Insurance Company was directed to deposit a sum of Rs.35,00,000/- as a condition for stay by the order dated 21.09.2017. and the same has been complied with. Hence, the Insurance Company is directed to deposit the balance award amount as per the modified award less the amount already deposited within a period of four (4) weeks from the date of receipt of a copy of this order. On such deposit, the major claimant, namely the 1st respondent wife of the deceased is entitled to withdraw the compensation. The Tribunal is directed to deposit the share of the minor respondents 2 to 4 in an interest earning fixed deposit in any one of the Nationalised Banks till they attain majority and the mother namely the 1st respondent will be entitled to withdraw quarterly interest from the fixed deposit for the maintenance of the minors.

8.In fine, the appeal is partly allowed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

gsa
To
The Motor Accidents Claims Tribunal,
III Additional District Judge,
Poonamallee.

Copy to
The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.K.Varadhakamaraj, Advocate Sr.62079
+1cc to Mr.S.Arunkumar, Advocate Sr.62713

CMA No.2823 of 2017
and C.M.P.No.16128 of 2017

ssi[co]
srg 13/11/2018

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/