IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.04.2018

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN

AND

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

C.M.A. No. 2832 of 2017

Dharanibai ..Appellant/Claimant

Vs.

1. Ayesha Tabassum

2. ICICI Lombard General Insurance Co. Ltd.,
No.140, Chottabhai Centre,
Nungambakkam High Road,
Chennai - 34. ..Respondents/Respondents

Prayer: Civil Miscellaneous Appeal as against the decree and judgment dated 07.06.2017 made in M.C.O.P. No. 4301 of 2014 on the file of Motor Accidents Claims Tribunal (Chief Judge, Small Causes Court), Chennai.

For Appellant :: Mr.K. Varadha Kamaraj
For Respondents:: Mr.S.L. Venkatesan for R1
Mrs.R. Sreevidya for R2

J U D G M E N T

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

This Civil Miscellaneous Appeal has been preferred by the claimant not being satisfied with the quantum of compensation awarded by the Motor Accidents Claims Tribunal (Chief Judge, Court of Small Causes), Chennai, in M.C.O.P. No. 4301 of 2014 by order dated 07.06.2017 for the death of her son, by name, Thiyagarajan, aged about 29 years, working as Manager in Balaji Mineral Water Plant Company, Arni Taluk, Thiruvannamalai District, allegedly earning Rs. 12,000/- per month, in the accident, which occurred on 26.05.2014.

2. Heard Mr.K. Varadha Kamaraj, learned counsel for the appellant and Mr.S.L. Venkatesh, learned counsel for the 1st respondent and Mrs.R. Sreevidya, learned counsel for the 2nd respondent.

3. There is no appeal by the Insurance Company and the claimant alone is before this Court questioning the adequacy of the compensation awarded by the Tribunal.

4. Though the claimant/appellant claimed that the deceased was earning a sum of Rs.12,000/- per month and examined P.W.3, the employer of the deceased, who deposed that the deceased was earning the said sum, besides marking Ex-P14, the salary certificate before the Tribunal, the Tribunal fixed only a sum of Rs.8000/- as the monthly income of the deceased and added 50% towards "Future Prospects" and deducted 50% towards "Personal Expenses" as the deceased was a bachelor. However, it would be pertinent to refer to the judgment of the Honourable Supreme Court in Syed Sadiq and others V. Divisional Manager, United India Insurance Company Limited reported in 2014 ACJ 627, wherein for a vegetable vendor, who sustained injuries in the accident, which took place in the year 2008, a sum of Rs.6500/- was fixed as monthly income. Further, the Honourable Apex Court, in its judgment in Nita and Others V. Divisional Manager, MSRTC, Kolapur reported in 2015 1 TN MAC 161, determined the monthly income of a Carpenter, aged about 31 years, at Rs.12000/-, in the absence of any documentary evidence in support of the same. Though the Tribunal was not convinced with the evidence adduced to the effect that the deceased was earning a sum of Rs.12,000/- per month, this Court, in the light of the aforesaid judgments of the Honourable Supreme Court, is convinced that the monthly income of the deceased should have been fixed at Rs.12,000/-. Therefore, this Court re-determines the monthly income of the deceased as Rs.12,000/-. To this, 40% has to be added towards "Future Prospects", following the judgment of the Constitution Bench of the Honourable Supreme Court in National Insurance Company Limited V. Pranay Sethi and Others reported in 2017 ACJ 2700. Therefore, the total monthly income of the deceased would be,

Monthly Income	::	Rs.12,000/-
Add: 40% towards "Future Prospects"	::	Rs.12,000/- (+) 40% (Rs.12,000/-)
	::	Rs.12,000/- (+) Rs.4800/-
Total Monthly Income	::	Rs.16,800/-

5. Eventhough Mr.K. Varadha Kamaraj, learned counsel for the appellant very strenuously argued that one-third deduction has to be made towards "Personal Expenses' banking upon the judgment of the Honourable Apex Court in Sarla Verma's case (2009 ACJ 1298 (SC)) wherein it has been stated that if the deceased left behind an aged mother, then one-third deduction has to be made, instead of 50%, in the present case, besides the deceased, there are other children to take care of the claimant. Therefore, 50% has to be deducted towards "Personal Expenses"

of the deceased as has been rightly done by the Tribunal. Applying the said deduction, "the Monthly Contribution of the deceased to his family" is arrived at as hereunder:

Total Monthly Income	::	Rs.16,800/-
LESS: 50% towards "Personal Expenses"	::	Rs.16,800/- (-) 50% (Rs.16,800/-)
	::	Rs.16,800/- (-) Rs.8400/-
	::	Rs.8,400/-

6. As per Sarla Verma's case (2009 ACJ 1298 (SC)), for the age of 29 years, which is proved by Ex-P2, postmortem certificate and Ex-P5, SSLC certificate, the approriate multiplier to be adopted is 17. Adopting the said multiplier, "Loss of Income" is determined thus:

Loss of Income	::	Rs.8,400/- x 12 x 17
	::	Rs.17,13,600/-

7. As far as the amounts awarded under the other heads are concerned, the Tribunal awarded a sum of Rs.25,000/- towards "Loss of Love and Affection" and the same is enhanced to Rs.50,000/-. The sum of Rs.5000/- awarded towards "Transport Expenses" is confirmed while Rs.25,000/- awarded towards "Funeral Expenses" is reduced to Rs.15,000/-. No amount was awarded towards "Loss of Estate" and hence, Rs.15,000/- is awarded under the said heading. The total compensation payable to the appellant/claimant works out to,

Loss of Income	::	Rs.17,13,600/-
Loss of Love and Affection	::	Rs. 50,000/-
Funeral Expenses	::	Rs. 15,000/-
Transport Expenses	::	Rs. 5,000/-
Loss of Estate	::	Rs. 15,000/-
Total	::	Rs.17,98,600/-
rounded off to	::	Rs.18,00,000/-

The rate of interest awarded @7.5% per annum by the Tribunal remains intact. Additional court-fee, if any, shall be paid by the appellant for the enhanced amount.

8. It is stated that the 2nd respondent Insurance Company has already deposited the entire amount, as awarded by the Tribunal. Therefore, the balance amount, as per the modified award passed by this Court, along with proportionate interest and costs, shall be deposited by the 2nd respondent, before the Tribunal, within a period of four 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 appellant/claimant, through RTGS, within a period of one week therefrom.

9. In fine, the Civil Miscellaneous Appeal is partly allowed and the award of the Tribunal to the tune of Rs. 7,03,000/- is enhanced to Rs.18,00,000/- with interest @ 7.5% per annum. No costs.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

nv
To

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

+1cc to Mr.S.R.SREEVIDYA, Advocate, S.R.No.32363
+1cc to Mr.K.VARADHAKAMARAJ, Advocate, S.R.No.32530

C.M.A. No. 2832 of 2017

KGK(CO)
TR(31/05/2018)