IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2018

CORAM

THE HONOURABLE MR. JUSTICE R. SUBBIAH
AND
THE HONOURABLE MR. JUSTICE P.D. AUDIKESAVALU

C.M.A. No. 3117 of 2014

1. M. Epsy Graice Martin
2. M. Nancy Jenifer
3. M. Subha Josephin
4. M. Jaya Prabha (Minor)
5. M. Jackquline (Minor)

(Minors 4 and 5 rep. by their mother and next friend M. Epsy Graice Martin) ..Appellants/Petitioners

Vs.

1. J. Mani
2. The New India Assurance Co. Ltd.,
   109, Nungambakkam High Road
   Chennai - 34.
3. M/s. Bajaj Probiking,
   Dev Regency Building,
   11-G1, 1st Main Road,
   Adyar, Chennai - 20. ..Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988 as against the judgment and decree dated 28.02.2014 passed in M.C.O.P. No. 4881 of 2007 by the Motor Accidents Claims Tribunal (Chief Judge), Court of Small Causes, Chennai.

For Appellant :: Ms.Ramya V. Rao

For Respondents:: No appearance for R1

Mrs.C. Harini for

Mr.N. Vijayaraghavan for R2

J U D G M E N T

(Judgment of the Court was delivered by R. SUBBIAH,J.)

The claimants before the Tribunal, who are wife and four daughters of the deceased, by name, Mani, have come forward with the present appeal seeking enhancement of the compensation awarded by the Motor Accidents Claims Tribunal (Chief Judge), Court of Small Causes, Chennai, by award dated 28.02.2014 in M.C.O.P. No. 4881 of 2007.

2. The case of the claimants before the Tribunal was that on 15.07.2007, when the deceased Mani was proceeding towards Mahabalipuram, in his motor cycle bearing Registration No. TN 21 R 9946, his two-wheeler was hit by another motor cycle bearing Registration No. TN 09 T 9972, driven in a rash and negligent manner, insured with the 2nd respondent Insurance Company, resulting in his death. Hence, the claim petition was filed seeking compensation to the tune of Rs. 40 lakhs.

3. In order to prove the claim, on the side of the claimants, the 1st claimant/wife of the deceased examined herself as P.W.1, besides examining six other witnesses and marking Exs-P1 to P24. On behalf of the Insurance Company, two witnesses were examined as R.W.s 1 and 2 and 9 documents were marked as Exs-R1 to R9. The Tribunal, on appreciating the entire evidence on record, came to the conclusion that the accident had occurred only due to the rash and negligent driving of the vehicle insured with the Insurance Company and passed an award for a total sum of Rs. 24,74,040/- and the break-up details of the award are as hereunder:

Loss of Dependency	::	Rs.23,99,040/-
Loss of Consortium	::	Rs. 25,000/-
Loss of Love and Affection	::	Rs. 25,000/-
Loss of Estate	::	Rs. 10,000/-
Funeral Expenses	::	Rs. 10,000/-
Transport Expenses	::	Rs. 5,000/-

4. The only grievance of the learned counsel for the appellants is that while calculating the compensation under " Loss of Income", the Tribunal, while fixing the multiplier as 13, based on the age of the deceased, had adopted split multiplier method, which had resulted in awarding inadequate compensation. Hence, the learned counsel would submit that the split multiplier method adopted by the Tribunal could be set aside and instead multiplier 13 could be adopted as such to recalculate the amount awarded under " Loss of Income".

5. Per contra, the learned counsel for the 2nd respondent Insurance Company made submissions in support of the award passed by the Tribunal.

6. Keeping the submissions of the learned counsel on either side, we have carefully gone through the materials on record.

7. From the materials on record, it is evident that the deceased was employed as Technician 'G' Grade in IGCAR, Kalpakkam and was earning a sum of Rs.22,279/- per month. In order to prove the income of the deceased, P.W.5, an Assistant in IGCAR was examined as P.W.5 and pay slips were marked as Ex-P19 series. Based on the evidence of P.W.5 and Ex-P19 series, the income of the deceased was fixed as Rs.22,249/- after deducting Rs.30/- given as " washing allowance". Thereafter, 20% was deducted towards income tax and Rs. 17,799/- was arrived at, as monthly income of the deceased. To this, 30% was added towards " Future Prospects" and the total monthly income was calculated as 23,179/- (Rs.17,799 + 30% (Rs.17,799/-)). However, this income was taken only for a period of 10 years, till the superannuation of the deceased One-fourth was deducted towards " Personal Expenses", and based on the age of the deceased, who was 49 years old, multiplier 13 was adopted following the judgment of the Honourable Apex Court rendered in Sarla Verma's case ((2009 (2) TN MAC 1 (SC). However, while calculating "Loss of Dependency", split multiplier method was adopted and "Loss of Dependency" for the first 10 years was calculated as Rs.20,86,110/- (Rs.23,179 x 12 x ¾ x 10) and for the balance 3 years, 50% of the monthly income was taken into consideration, ie., Rs.23,179/2 = Rs.11589.50, rounded off to Rs.11590 and after deducting one-fourth towards "Personal Expenses" of the deceased, "Loss of Dependency" for the remaining period of 3 years was arrived at Rs.3,12,930/- (Rs.11590 x 12 x ¾ x 3). The "total loss of dependency" was calculated as Rs.23,99,040/- (Rs.20,86,110/- (+) Rs.3,12,930/-) and together with the amounts awarded under the conventional heads, a sum of Rs.24,74,040/- was awarded as total compensation.

8. As rightly contended by the learned counsel for the appellants, the Tribunal erred in adopting split multiplier method while calculating the compensation and in the light of the judgment of the Honourable Apex Court rendered in K.R. Madhusudhan and Others V. Administrative Officer and Another reported in (2011) 4 SCC 689, the split multiplier method adopted by the Tribunal, without any reason, is set aside and the compensation payable to the claimants is re-calculated as

follows:

The income of the deceased, as borne out by Ex-P19 series, is Rs.22,279/- and after deducting Rs.30/- given as "washing allowance", the income of the deceased would be Rs.22,249/-. By adding 30% towards "Future Prospects", the total income of the deceased would be,

= Rs.22,249 + 30% (Rs.22,249/-)
= Rs.22,249/- + Rs.6,674/-
= Rs.28,923/-

From this, instead of 20%, 10% is deducted towards income tax. Then "the Monthly Income of the deceased" would be,

Monthly Income = Rs.28,923/- (-) 10% (Rs.28,923/-)
= Rs.28,923/- (-) Rs.2,892/-
= Rs.26,031/-

Considering the size of the family, if one-fourth deduction is made towards "Personal Expenses" of the deceased, then the "Monthly Contribution of the deceased to his Family" would be,

Monthly Contribution= Rs.26,031/- (-) ¼ (Rs.26,031/-)
= Rs.26,031/- (-) Rs.6,507/-
= Rs.19,523.25/-
= Rs.19,524/-

Annual Contribution = Rs.19,524 x 12

Adopting multiplier 13, as per the age of the deceased, "Loss of Dependency" would be,

Loss of Dependency = Rs.19,524 x 12 x 13
= Rs.30,45,744/-

As far as the amounts awarded under the other heads are concerned, the amounts awarded towards "Loss of Consortium" and "Loss of love and affection" are enhanced to Rs.40,000/-each; the sum of Rs.10,000/- under "Loss of Estate" is enhanced to Rs.15,000/-. So also, the sum of Rs.5000/- awarded towards "Funeral Expenses" is enhanced to Rs.15,000/-. In all, a sum of Rs.31,55,744/- is awarded as compensation to the appellants.

9. In the result, the Civil Miscellaneous Appeal is allowed and the award of the Tribunal, to the tune of Rs. 24,74,040/- is enhanced to Rs.31,55,744/- and the break up details of the same is as hereunder:

Loss of Dependency	::	Rs.30,45,744/-
Loss of Consortium	::	Rs. 40,000/-
Loss of love and affection	::	Rs. 40,000/-
Loss of Estate	::	Rs. 15,000/-
Funeral Expenses	::	Rs. 15,000/-
Total	::	Rs.31,55,744/-

The rate of interest awarded by the Tribunal @ 7.5% per annum is sustained.

10. The 2nd respondent Insurance Company is directed to deposit the entire award amount, as per the modified award passed by this Court, with interest and costs, within a period of six weeks from the date of receipt of a copy of this order. On such deposit being made, the 1st appellant would be entitled to a sum of Rs.15,00,000/- and the balance award amount is to be apportioned equally among appellants 2 to 5. Appellants 2 and 3 are permitted to withdraw their respective shares from the balance awarrd amount and the share of minor appellants 4 and 5 shall be deposited in anyone of the Nationalised Banks in interest bearing Fixed Deposit till they attain majority. The 1st appellant, being the mother, is entitled to withdraw interest accruing on such deposit once in three months. No costs.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

nv

To

The MACT, Court of Small Causes,
Chennai.

+1 CC to Mr.N. Vijayaraghavan, Advocate sr 2543.
+1 Cc to Mr.A.N. Viswanatharao, Advocate sr 2028.

C.M.A. No. 3117 of 2014

GJ(CO)
SP(17/02/2018)