IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:11.01.2018

CORAM

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

C.M.A. Nos. 3157 of 2014 & 2313 of 2016
&
C.M.P. Nos. 16286 of 2016 & 698 of 2017

C.M.A. No. 3157 of 2014

1. Manjula
2. Indumathi (minor)
3. Hariharan (minor)
(2nd and 3rd minors are rep. by mother and NF Manjula)
4. Panchanathan ..Appellants/Petitioner

Vs.

1. N. Manimozhi

2. The New India Assurance Co. Ltd.
NO. 28/29, B.R. Complex,
Woods Road, Chennai - 600 002. ..Respondents

Prayer: Civil Miscellaneous Appeal as against the judgment and decree dated 28.04.2014 passed in M.C.O.P. No. 400 of 2012 on the file of Motor Accidents Claims Tribunal (IV Small Causes Court), Chennai.

For Appellants :: M/s.V.Mohan Choudary &
K. Varadhakamaraj

For Respondents:: Mr.M. Krishnamoorthy
for R2

C.M.A. No. 2313 of 2016

The New India Assurance Co. Ltd.,
No. 28/29, B.R. Complex,
Woods Road, Chennai - 2. ..Appellant/2nd Respondent

Vs.

1. Manjula

2. Indumathi (minor)
3. Hariharan (minor)
(Minors rep. by
mother and NF Manjula)
4. Panchanathan
5. N. Manmozhi ..Respondents/Petitioners & 1st Respondent

Prayer: Civil Miscellaneous Appeal as against the judgment and decree dated 28.04.2014 passed in M.C.O.P. No. 400 of 2012 on the file of Motor Accidents Claims Tribunal (IV Small Causes Court), Chennai.

For Appellant :: Mr.M. Krishnamurthy
For Respondents:: M/s.V. Mohan Choudhury
&
K. Varadhakamaraj
for R1 to R4

J U D G M E N T

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

Questioning the quantum of compensation awarded by the Motor Accidents Claims Tribunal (IV Small Causes Court), Chennai, in and by award dated 28.04.2014 in M.C.O. P. No. 400 of 2012, the claimants have filed C.M.A. No. 3157 o f 2014 stating that the compensation is inadequate while the Insurance Company has filed C.M.A. No. 2313 of 2016 terming the said award as excessive.

2. Since the appeals have been filed questioning only the quantum of compensation, it is not necessary for this Court to traverse into other aspects of the award.

3. The case of the claimants before the Tribunal was that the deceased, by name, Pari, was working as Headmaster in Panchayat Union Middle School, Chithamur, Cheyyur Taluk, Kanchipuram District and earning a sum of Rs.35,000/- per month. In order to prove the income of the deceased, Ex-P10, Pay Certificate, Ex-P11 - Copy of Service Register of the deceased, Ex-P12 - Copy of Pan card as well as Ex-P15, last drawn salary particulars of the deceased, were marked. The Tribunal, by considering the said documents, fixed the monthly income of the deceased as Rs.26,840/- consisting of three components, namely, Basic Pay at Rs.21,040/-, Grade Pay a Rs.5400/- and HRA at Rs.400/- and after deducting one-fourth towards "Personal Expenses" of the deceased and adopting multiplier 13, arrived at Rs. 31,40,280/- towards "Loss of Pecuniary Benefits" besides awarding amounts under the other heads.

4. The contention of the learned counsel for the Insurance Company is that the monthly income of the deceased fixed by the Tribunal at Rs.26,840/- is on the higher side and further, it is also conteded that no deduction was made towards income tax payable by the deceased and therefore, appropriate reduction has to be made and the compensation amount has to be re-determined.

5. Per contra, the learned counsel for the claimants would submit that the Tribunal has erred in fixing the monthly income as Rs.26,840/- since the Gross Salary of the deceased, as per documents furnished, is Rs.42,275/-. Further, according to the learned counsel for the claimants, the Tribunal has not taken into account, the "Future Prospects" of the deceased and therefore, by re-fixing the monthly income and by awarding "Future Prospects", the compensation amount has to be enhanced.

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

7. From a perusal of the materials on record, especially, Ex-P15, we find that the total monthly income of the deceased is Rs.42,275/-, consisting of the following components:

Basic Pay	::	Rs.21,040/-
Grade Pay	::	Rs. 5,400/-
D.A. At 58%	::	Rs.15,335/-
HRA	::	Rs. 400/-
MA	::	Rs. 100/-
Total	::	Rs.42,275/-

Therefore, we are of the opinion that by fixing Rs.42,275/- as the monthly income of the deceased, "Loss of Pecuniary Benefits" has to be recalculated so as to arrive at a just and proper compensation. Accordingly, Rs.42,275/- is fixed as the monthly income of the deceased.

8. Since the deceased was aged about 45 years at the time of accident, 30% has to be added towards "Future Prospects" as per the judgment of the Honourable Apex Court rendered in Sarla Verma and others V. Delhi Transport Corporation and another reported in 2009 6 SCC 121. Therefore, the “Total Monthly Income” of the deceased would be,

Monthly Income	::	Rs.42,275/-
Add: 30% towards “Future Prospects”	::	Rs.42,275/- (+) 30%(Rs.42,275/-)
	::	Rs.42,275/- (+) Rs.12,682
Total Monthly Income	::	Rs.54,957/-
Annual Income	::	Rs.54,957 x 12
	::	Rs.6,59,484/-

9. As rightly contended by the learned counsel for the Insurance Company, no deduction was made towards income tax payable by the deceased. Therefore, appropriate reduction has to be made towards the same based on the rates applicable at the relevant point of time. It is brought to the notice of this Court that at that time, tax exemption limit was upto Rs.2,50,000/- and therefore, it would be appropriate to deduct income-tax for the balance amount, at 10%. Accordingly, applying the same,

Total Annual Income	::	Rs.6,59,484/-
No Tax upto Rs.2,50,000/-	::	(-)Rs.2,50,000/-
		Rs.4,09,484/-
IT Deduction at 10% for Rs.4,09,484/-	::	Rs. 40,948/-
Annual Income after IT deduction	::	Rs.6,59,484/- (-) Rs. 40,948/-
	::	Rs.6,18,536/-

Now, deducting one-third towards "Personal Expenses" of the deceased, the "Annual Contribution of the deceased to his family" would be,

Annual Income	::	Rs.6,18,536/-
Less: One-third towards "Personal Expenses"	::	Rs.6,18,536/- (-) 1/3 (Rs.6,18,536/-)
	::	Rs.6,18,536/- (-) Rs.2,06,178/-
Annual Contribution	::	Rs. 4,12,358/-

Applying multiplier 13, as adopted by the Tribunal, "Loss of Dependency" or "Loss of Pecuniary Benefits" works out to,

Loss of Pecuniary Benefits	::	Rs.4,12,358 x 13
	::	Rs.53,60,654/-

Hence, the sum of Rs. 31,40,280/- awarded by the Tribunal towards "Loss of Pecuniary Benefits" is enhanced to Rs.53,60,654/-.

10. As far as the amounts awarded under the other heads are concerned, the sum of Rs.50,000/- awarded towards "Loss of Consortium" is reduced to Rs.30,000/- while Rs.15,000/- granted under the head "Funeral Expenses" is enhanced to Rs.20,000/-. Since no amount was awarded towards "Loss of Estate", a sum of Rs.20,000/- is awarded under the said head and the amount awarded towards "Loss of Love and Affection" is set aside. To sum up, the compensation payable to the claimants is,

Loss of Pecuniary Benefits	::	Rs.53,60,654/-
Loss of Consortium	::	Rs. 30,000/-
Funeral Expenses	::	Rs. 20,000/-
Loss of Estate	::	Rs. 20,000/-
Total	::	Rs.54,30,654/-

The rate of interest awarded by the Tribunal @ 7.5% per annum remains intact. Further, the Tribunal, while passing the award had stated that though the owner of the vehicle, namely, the 1st respondent in C.M.A. No. 3157 of 2014 is liable to pay compensation for violation of policy conditions, the Insurance Company, being the indemnifier is directed to pay the compensation at first and thereafter, recover the same from the 1st respondent. The said direction given by the Tribunal, to pay and recover is also confirmed.

11. In fine, the Civil Miscellaneous Appeal filed by the claimants in C.M.A. No. 3157 of 2014 is partly allowed and the Civil Miscellaneous Appeal filed by the Insurance Company in C.M.A. No. 2313 of 2016 is dismissed. No costs.

12. The Insurance Company is directed to deposit the entire amount, as per the modified award passed by this Court, with interest and costs, before the Tribunal, within a period of six weeks from the date of receipt of a copy of this order. On such deposit being made, the first appellant in C.M.A. No. 3157 of 2014/wife of the deceased would be entitled to Rs.20 lakhs, appellants 2 & 3 in the said appeal/minor children of the deceased would be entitled to Rs.15 lakhs each and the 4th appellant/father of the deceased would be entitled to the balance amount. The major claimants are permitted to withdraw their respective shares while the share of the minor claimants shall be deposited in any one of the Nationalised Banks in interest bearing Fixed Deposit till they attain majority. The 1st appellant in C.M.A.No. 3157 of 2014/mother of minor claimants is permitted to withdraw interest accruing on such deposit once in three months.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1.The MACT (IV Small Causes Court),Chennai.
2.The Section Officer, VR Section,
High Court, Madras (2 copies)
+2cc to Mr.M.Krishnamurthy, Advocate Sr.No.2320, 2319
+3cc to Mr.V.Mohan Choudary, Advocate Sr.NO.2308

SR(CO)
EU:27.2.2018