IN THE JUDICATE OF MADRAS HIGH COURT

Dated : 12.01.2018

CORAM

THE HON'BLE MR.JUSTICE R.SUBBIAH
and
THE HON'BLE MR.JUSTICE P.D.AUDIKESAVALU

C.M.A.No.3160 of 2014
and
M.P.No.1 of 2014 & M.P.No.1 of 2015

Branch Manager,
Royal Sundaram Alliance Insurance Co. Ltd.,
Sundaram Towers,
No.46, Whites Road,
Royapettah, Chennai-600 014. ... Appellant/2nd Respondent

Vs.

1.Bhuvaneshwari

2.Minor Harish Ragavendar
(rep by mother & next friend Bhuvaneshwari)

3.Pichaimmal
4.Ragothaman ... Respondents /1 to 3 Petitioner & 1st Respondent

Civil Miscellaneous Appeal has been been filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 29.11.2013 in M.C.O.P.No.562 of 2012 passed by the Motor Accidents Claims Tribunal (Additional District Judge), Dharmapuri.

For Appellant : Ms.C.Harini for
Mr.N.Vijayaraghavan
For Respondents: Mr.M.Devaraj (For R1 to R3)

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JUDGMENT

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

Challenging the quantum of compensation awarded by the Motor Accidents Claims Tribunal (Additional District Judge), Dharmapuri, in and by award dated 29.11.2013 in M.C.O.P.No.562

of 2012, the present appeal has been filed by the Insurance Company.

2.The respondents 1 to 3 herein are the claimants before the Tribunal and they are the wife, minor son and mother of the deceased Selvakumar, who had died in an accident that had occurred on 22.03.2012 involving the car bearing Reg.No.TN 29 AH 0833 owned by the 4th respondent herein and insured the appellant/Insurance Company.

3.Since this appeal has been filed questioning only the quantum of compensation, it is not necessary for this Court to traverse into the other aspects of the award passed by the Tribunal.

4.So far as the quantum of compensation is concerned, it is the case of the claimants before the Tribunal that the deceased Selvakumar was working as a Overseer in the Block Development Office at Dharmapuri and he was drawing a monthly salary of Rs.20,473/-. Based on the said salary amount, the claimants made a claim for a sum of Rs.50 lakhs as compensation. In order to prove their claim before the Tribunal on the side of the claimants, the 1st claimant/wife examined herself as P.W.1 besides examining two other witnesses as P.W.2 & P.W.3 and marked ten documents as Ex.P.1 to Ex.P.10. On the side side of the Insurance Company, one witness was examined as R.W.1, but no documentary evidence was produced.

5.The Tribunal, after analysing the entire evidence, has passed an award for a total sum of Rs.46,68,936/- as compensation. Questioning the quantum of compensation, the present appeal has been filed by the Insurance Company.

6.It is the case of the claimants before the Tribunal that the deceased was working as a Overseer in Block Development Office at Dharmapuri and earning a sum of Rs.20,473/- per month. In order to prove the income earned by the deceased Selvakumar, on the side of the claimant one Gnaseelan, Assistant in Block Development Office, was examined as P.W.3 and Salary Certificate was marked as Ex.P.3, Service Register was marked as Ex.P.9 and S.R.Book & Salary Certificate were marked as Ex.P.10. Considering the evidence produced on the side of the claimants, the Tribunal has fixed a sum of Rs.20,473/- as monthly income of the deceased and arrived at a sum of Rs.2,45,676/- as annual income. During the year 2012, basic exemption from payment of income tax was upto Rs.1,80,000/-. Hence, the Tribunal has deducted 10% amount towards income tax for the remaining amount of Rs.65,676/- (2,45,676 - 1,80,000 = 65,676) and arrived at a sum of Rs.2,39,108/- as annual loss of income. Thereafter, by deducting 1/4th amount towards personal expenses, by adding 50% towards future prospects and by applying multiplier 16 on the basis of the age of the deceased who was 34 years at the time of accident, the Tribunal has awarded a sum of Rs.43,03,936/- under the head of loss of income. That apart, the Tribunal has awarded a sum of Rs.50,000/- for loss of consortium, a sum of Rs.15,000/- for funeral expenses and a sum of Rs.1,00,000/- each for the loss of love and affection to the claimants 2 to 4. Thus, the Tribunal has passed an award for a total compensation amount of Rs.46,68,936/-.

7.Now, it is the contention of the learned counsel for the appellant/Insurance Company that the claimants are only three in number and under such circumstances, the Tribunal ought to have deducted 1/3rd amount towards personal expenses, but the Tribunal has deducted only 1/4th amount towards personal expenses. Thus, it is the contention of the learned counsel for the appellant/Insurance Company that by deducting 1/3rd amount towards personal expenses, the compensation amount awarded by the Tribunal has to be reduced.

8.The learned counsel for the claimants made his submissions supporting the award passed by the Tribunal.

9.Keeping the submissions made on either side, We have carefully gone through the entire materials available on record.

10.It is seen from the materials available on record that the Tribunal has fixed the monthly income of the deceased at Rs.20,473/-, which is evident from Ex.P.3, Ex.P.9 & Ex.P.10. If so fixed, the annual income of the deceased would come to Rs.2,45,676/-. During the year 2012, upto Rs.1,80,000/- there was an exemption for payment of income tax. Therefore, the taxable income comes to Rs.65,676/- and if 10% amount is deducted, then the actual income comes Rs.2,39,108/- (2,45,676 - 6,567). In the instant case, the claimants are three in number. As contended by the learned counsel for the appellant/Insurance Company, instead of 1/4th, only 1/3rd amount has to be deducted towards personal expenses. If so deducted, the balance amount comes to Rs.1,59,405/- (2,39,108 - 79,702). If 50% amount is added towards future prospects, the total comes to Rs.2,39,107/- (1,59,405 - 79,702). The correct multiplier that has to be applied in the instant case is 16, based on the age of the deceased, who was 34 years at the time of accident. If multiplier 16 is applied, the total amount works out Rs.38,25,712/- (2,39,107 x 16), which would be just and proper compensation under the head of loss of income.

11.That apart, it is seen that the Tribunal has awarded a sum of Rs.50,000/- for loss of consortium to the wife of the deceased. As per the recent decision of the Hon'ble Supreme Court reported in 2017 SCC OnLine SC 1270 [National Insurance

Company Ltd., Vs. Pranay Sethi and others], the wife is entitled to only a sum of Rs.40,000/- as consortium. Hence, the sum of Rs.50,000/- awarded by the Tribunal under the head of loss of consortium is hereby reduced to Rs.40,000/-. The amount of Rs.15,000/- awarded towards funeral expenses by the Tribunal is hereby confirmed. The sum of Rs.1,00,000/- each awarded to the claimants 2 to 4 for the loss of love and affection appears to be reasonable, hence, the same is hereby confirmed. Thus, the total compensation amount of Rs.46,68,936/- awarded by the Tribunal is hereby modified/reduced to Rs.41,80,712/-. The break up details of the modified/reduced compensation amount are as follows_

Loss of Income	:Rs.38,25,712/-
Loss of Consortium	:Rs. 40,000/-
Loss of Love and Affection	:Rs. 3,00,000/-
Funeral expenses	:Rs. 15,000/-
	Rs.41,80,712/-

12.In fine, the appeal is partly allowed and the total compensation amount of Rs.46,68,936/- (Rupees Forty Six Lakhs Sixty Eight Thousand Nine Hundred and Thirty Six Only) awarded by the Tribunal is hereby modified/reduced to Rs.41,80,712/- (Rupees Fourty One Lakh Eighty Thousand Seven Hundred and Twelve Only). From the total compensation amount, the 1st claimant/wife is entitled to Rs.20 lakhs, the 2nd claimant/minor son is entitled to Rs.15 lakhs and the 3rd claimant mother is entitled to the balance amount of Rs.6,80,712/-. The appellant/Insurance Company is directed to deposit the entire compensation amount with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, after deducting the amount if any already deposited, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the 1st claimant/wife and 3rd claimant/mother are entitled to withdraw their share amount with accrued interest thereon by making necessary application before the Tribunal. The share amount of the minor claimant/2nd claimant shall be deposited in any one of the nationalised bank till he attains majority and the 1st claimant is permitted to withdraw the interest accrued thereon once in every three months.

Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

ssv
To,

1.The Additional District Judge
Motor Accidents Claims Tribunal
Dharmapuri

2.The Section Officer
VR Section
High Court, Madras-104

+1 cc to Mr.Devaraj Advocate sr 3041
+1 cc to Mr.N.Vijayaraghavan Advocate sr 3874

C.M.A.No.3160 of 2014
and
M.P.No.1 of 2014 & M.P.No.1 of 2015

nm(co)
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