IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.02.2018

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

C.M.A.No.3231 & 3232 of 2014
and
M.P.Nos. 1 & 1 of 2015

1.Tmt.M.Sheela
2.M.Basteen
3.M.Simon Santosh Kumar ... Appellants in both the CMAs

Vs.

1.G.Nageswaran

2.M/s.ICICI Lobard General Insurance Co. Ltd.,
1st Floor, Arihant Plaza,
No.84/85, Walltax Road,
Chennai-600 003. ... Respondents in both the CMAs

Civil Miscellaneous Appeals have been filed under Section 173 of Motor Vehicles Act 1988 against the common judgment and decree dated 07.08.2013 in M.C.O.P.Nos.4944 & 4943 of 2011 respectively passed by the Motor Accident Claims Tribunal (VIth Court of Small Causes), Chennai.

For Appellants : Mr.M.K.Srinivasan
For Respondents : Mrs.R.Sreevidhya (For R2)
R1 - No appearance

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COMMON JUDGMENT

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

Both the above appeals have been filed by the claimants challenging the common award dated 07.08.2013 in M.C.O.P.Nos.4944 & 4943 of 2011 respectively passed by the Motor Accident Claims Tribunal (VIth Court of Small Causes), Chennai.

2.The appellants herein are the claimants and the respondents herein are the owner of the vehicle which involved in the accident and its insurer respectively. Since the parties are one and the same in both the appeals, these appeals are disposed of by way of this common judgment.

3.The deceased persons in these cases are father and daughter viz., one Samuel @ J.Mani and Jenifer. The 1st claimant is the wife and the claimants 2 & 3 are the sons of the said Samuel @ J.Mani. It is the case of the claimants that on 01.08.2009 at about 08.30 hours, while the said Samuel @ J.Mani was riding the motor cycle bearing Reg.No.TN-22-BY-2426, along with her daughter Jenifer as pillion rider, on the extreme left side of the Kundrathur to Mangadu Road, the Lorry bearing Reg.No.TN-20-AX-3336 owned by the 1st respondent and insured with the 2nd respondent-Insurance Company came behind in a rash and negligent manner and dashed against the two-wheeler and thus, caused the accident. In the said accident, the father and daughter sustained grievous injuries and died on the spot. In respect of the death of the daughter Jenifer, the claimants have filed the claim petition in M.C.O.P.No.4943 of 2011 before the Tribunal claiming a sum of Rs.20 lakhs as compensation. Similarly, in respect of the death of the father Samuel & J.Mani, the claimants have filed another separate claim petition in M.C.O.P.No.4944 of 2011, claiming a sum of Rs.35,00,000/-.

4.Since both the appeals have been filed by the claimants only challenging the quantum of compensation awarded by the Tribunal, it is not necessary for this Court to traverse into the other aspects of the award passed by the Tribunal.

5-1.C.M.A.No.3231 of 2014 (M.C.O.P.No.4944 of 2011 filed in respect of the death of the father Samuel @ J.Mani):- With regard to the quantum of compensation, it is the case of the claimants before the Tribunal that the deceased Samuel was working as Supervisor in AREVAT & D India Limited, and earning a sum of Rs.30,000/- per month. In order to prove the income earned by the deceased Samuel, his salary slip was marked as Ex.P.10 and income tax card was marked as Ex.P.11 and Form 16 was marked as Ex.P.5 on the side of the claimants. But, inspite of the production of the said documents, the Tribunal has taken only a sum of Rs.4,500/- as monthly income of the deceased Samuel. Thereafter, by adding 30% amount towards future prospects and by deducting 1/4th amount towards personal expenses and by applying multiplier 13, the Tribunal has awarded a sum of Rs.6,84,528/- under the head of loss of income.

5-2.In this regard, it is the contention of the learned counsel for the claimants that when the documentary evidence was produced to show the income earned by the deceased, who was earning a sum of Rs.21,000/-, the Tribunal ought not to have fixed the meagre sum of Rs.4,500/- as monthly income of the deceased. Hence, the learned counsel for the claimant prayed that by fixing a sum of Rs.21,000/- as monthly income of the deceased, recalculation could be made to arrive at a just and proper compensation under the head of loss of income.

5-3.Per contra, the learned counsel for the 2nd respondent/Insurance Company has made her submissions supporting the award passed by the Tribunal.

5-4.Keeping the submissions made on either side, We have carefully gone through the entire materials available on record and We find that in order to prove the income earned by the deceased Samuel, on the side of the claimants, the salary slip was marked as Ex.P.10 and income tax card was marked as Ex.P.11, which documents would show that the deceased was earning a sum of Rs.21,000/- per month by working as Supervisor in ARVAT & D India Limited. But, inspite of the production of the said documents, the Tribunal without assigning any valid reason had taken only a meagre sum of Rs.4,500/- as monthly income of the deceased. Hence, We are of the opinion that by fixing a sum of Rs.21,000/- as monthly income of the deceased, the compensation amount could be recalculated to arrive at a just and proper compensation under the head of loss of income. Tribunal has not added any amount towards future prospects. Hence, the 30% amount has to be added towards future prospects. If a sum of Rs.21,000/- is taken as monthly income and 30% amount is added towards future prospects, then the total works out to Rs.27,300/-(21,000 + 6,300). If 10% amount is deducted towards income tax, the balance amount comes to Rs. 24,570/- (27,300 - 2,730). Since the dependants are three in number, 1/3rd amount has to be deducted towards personal expenses. If so deducted, the loss of monthly contribution to the family works out to Rs.16,380/- (24,570 - 8,190). The deceased Samuel was aged 45 years at the time of accident. Hence, the correct multiplier that has to be applied in this case is 13. If the multiplier 13 is applied, then the total loss of contribution to the family works out to Rs.25,55,280/- (16,380 x 12 x 13) which sum could be awarded as a just and proper compensation under the head of loss of income. Hence, the sum of Rs.6,84,528/- awarded by the Tribunal under the head of loss of income is hereby modified and enhanced to Rs.25,55,280/-. So far as the loss of consortium is concerned, We find that the Tribunal has awarded a sum of Rs.50,000/- under the said head. As per the recent decision of 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/- for loss of consortium. Hence, the sum of Rs.50,000/- awarded by the Tribunal is hereby reduced to Rs.40,000/-. The Tribunal has awarded only a sum of Rs.25,000/- for loss of love and affection, which is on the lower side. Hence, the same is hereby enhanced to Rs.1,50,000/- at the rate of Rs.75,000/- each to the appellants 2 & 3/claimants 2 & 3. Except the above modifications, the compensation amounts awarded by the Tribunal under other heads remain unaltered, as the same are just and reasonable. Consequently, the total compensation amount of Rs.7,94,528/- awarded by the Tribunal is hereby modified and enhanced to Rs.27,85,280/-. The break up details of the modified/enhanced compensation amount are as follows_

Loss of income	=Rs.25,55,280/-
Loss of consortium	=Rs. 40,000/-
loss of estate	=Rs. 15,000/-
Funeral expenses	=Rs. 15,000/-
Loss of love and affection	=Rs. 1,50,000/-
Transportation	=Rs. 10,000/-
Total	=Rs.27,85,280/-

6-1.C.M.A.No.3232 of 2014 (M.C.O.P.No.4943 of 2011 filed in respect of the death of daughter Jenifer):- It is the case of the claimants before the Tribunal that the deceased Jenifer had completed B.Sc., Bio-chemistry and she was working as Executive-Operation in IBM Daksh Business Services Pvt. Ltd., and was earning a sum of Rs.10,000/- upto April, 2009. Thereafter, she resigned her job in order to undergo facial correction by surgery. On the date of accident, she was going for the treatment. She had planned to resume her job after the surgery. In order to prove the income earned by the deceased Jenifer, before the Tribunal on the side of the claimants, Decree course completion and provisional certificate were marked as Ex.P.15, releaving letter by the employer and salary slip were marked as Ex.P.16. But, the Tribunal has rejected the said documents on the reasoning that on the date of accident, she was not in employment as she had resigned the job four months prior to the accident. Thus, the Tribunal has fixed only a sum of Rs.6,000/- as monthly income of the deceased instead of Rs.10,000/- and on that basis, the Tribunal made the calculation and awarded a sum of Rs.4,68,000/- under the head of loss of dependency. Challenging the same, the present appeal has been filed by the claimants seeking for enhancement of the compensation.

6-2.It is the contention of the learned counsel appearing for the appellants/claimants that when the documentary evidences were produced before the Tribunal, would show that the deceased was earning a sum of Rs.10,000/- per month. the Tribunal ought to have relied upon the said documents and fixed the monthly income of the deceased on that basis. But, the Tribunal on an erroneous finding has fixed only a sum of Rs.6,000/- as monthly income of the deceased stating that on the date of accident, the deceased was not in employment. Considering the qualification of the deceased Jenifer, who was a graduate in B.Sc., Bio-Chemistry, it could be safely inferred that she would have earned Rs.10,000/- per month. Thus, the learned counsel for the appellants/claimants prayed that by fixing a sum of Rs.10,000/- as monthly income, the compensation amount awarded by the Tribunal could be enhanced.

6-3.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company has made her submissions supporting the award passed by the Tribunal.

6-4.Keeping the submissions made on either side, We have carefully gone through the entire materials available on record and We find that in order to prove the income earned by the deceased Jenifer, on the side of the claimant, Ex.P.15 to Ex.P.17 were marked. We do not find any valid reason to reject those documents. Further more, considering the qualification of the deceased Jenifer, who was a graduate in B.Sc., Bio-chemistry, as contended by the learned counsel for the claimants, a minimum sum of Rs.10,000/- could be taken as monthly income of the deceased Jenifer. Hence, we are not inclined to accept the reasoning assigned by the Tribunal that since the deceased Jenifer was not in employment on the date of accident, the salary slip cannot be taken into consideration. Therefore, We are inclined to enhance to compensation amount by fixing a sum of Rs.10,000/- as monthly income of the deceased. If a sum of Rs.10,000/- is taken as monthly income, then 40% amount has to be added towards future prospects. If 40% amount is added, then the total comes to Rs.14,000/- (10,000 + 4,000). Since the deceased Jenifer was a spinster at the time of accident, 50% amount has to be deducted towards personal expenses. If 50% amount is deducted towards personal expenses, the monthly contribution to the family works out to Rs.7,000/-. The deceased Jenifer was aged 23 years at the time of accident. Hence, the correct multiplier that has to be applied in this case is 18. If the multiplier 18 is applied, then, the total loss of income works out to Rs.15,12,000/- (7,000 x 12 x 18). Consequently, the compensation amount of Rs.4,68,000/- awarded by the Tribunal for the loss of income is hereby modified and enhanced to Rs.15,12,000/-. That apart, it is seen that the Tribunal has awarded only a sum of Rs.25,000/- for loss of love and affection, which is on the lower side. Hence, the same is hereby enhanced to Rs.40,000/-. Except the above modifications, the compensation amounts awarded by the Tribunal under other heads remain unaltered as the same are just and reasonable. Consequently, the total compensation amount of Rs.5,18,000/- awarded by the Tribunal is hereby modified and enhanced to Rs.15,92,000/-. The break up details of the modified/enhanced compensation amount are as follows_

Loss of income	=Rs.15,12,000/-
Loss of love and affection	=Rs. 40,000/-
Funeral expenses	=Rs. 15,000/-
Loss of estate	=Rs. 15,000/-
Transportation	=Rs. 10,000/-
Total	=Rs.15,92,000/-

7.In the result,

(i)C.M.A.No.3231/of 2014 is partly allowed and the total compensation amount of Rs.7,94,528/- awarded by the Tribunal is hereby modified and enhanced to Rs.27,85,280/-, out of which the 1st claimant is entitled to 50% of the amount and the claimants 2 & 3 are entitled to 25% each.

(ii)C.M.A.No.3232/of 2014 is partly allowed and the total compensation amount of Rs.5,18,000/- awarded by the Tribunal is hereby modified and enhanced to Rs.15,92,000/-, out of which the 1st claimant is entitled to 50% of the amount and the claimants 2 & 3 are entitled to 25% each.

(iii)The Insurance Company is directed to deposit the entire compensation amounts as awarded above with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, after deducting the amounts if any already deposited, within a period of six weeks from the date of receipt of a copy of this order.

(iv)On such deposits being made, the claimants are entitled to withdraw their respective shares by making necessary applications before the Tribunal.

Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To,
1. The Motor Accident Claims Tribunal
(VIth Court of Small Causes)
Chennai.

2. The Section Officer, V.R. Section,
High Court, Madras.(2 copies)

+1cc to Mr.R.SREEVIDHYA, Advocate, S.R.No.10191
+2cc to Mr.A.BABU, Advocate, S.R.No. 10440 & 10441

C.M.A.No.3231 & 3232 of 2014
and
M.P.Nos. 1 & 1 of 2015

SKV(CO)
TR(07/06/2018)