IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.06.2018

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN
AND
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A. No. 3526 of 2017

1. S. Meenakumari
2. S. Dhivya
3. S. Tharanya
4. J. Saraswathy

(4th Appellant died as per order dated 04.06.2018 memo recorded) ..Appellants/Petitioner

Vs.

1. E.K. Asharaf

2. The Divisional Manager,
United India Insurance Company Limited,
13-A, Nethaji Road, Manjakuppam,
Cuddalore. ..Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, as against the judgment and decree dated 29.08.2017 passed in M.C.O.P. No. 3372 of 2015 by the Motor Accidents Claims Tribunal, (I ADJ), Cuddalore.

For Appellants :: Ms. Ramya Rao

For Respondents:: Notice to R1 dispensed with
Mr.D. Bhaskaran 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 claimants aggrieved over the quantum of compensation of Rs.21,32,236/- awarded by the Tribunal for the death of one J. Subbiah, aged about 51 years, working as Sub Inspector of Police, alleged to be earning a sum of Rs.42,000/- per month in the accident, which occurred on 29.06.2015 when the deceased was knocked down by a lorry, belonging to the 1st respondent and insured with the 2nd respondent Insurance Company, when he was standing on the left hand side of ECR Road at Aalapakkam.

2. Heard Ms. Ramya Rao, learned counsel for the appellants and Mr. D. Bhaskaran, learned counsel for the 2^{nd} respondent.

3. The 1^{st} respondent/owner of the offending vehicle remained ex parte even before the Tribunal and therefore, notice to 1^{st} respondent is dispensed with as per the Full Bench Judgment of the Madhya Pradesh High Court rendered in Mrs. Jamuna Bai V. Chhote Singh reported in I (2004) Acc. 190 (FB).

4. The only question to be decided is with regard to the quantum of compensation.

5. Though it was proved before the Tribunal that the deceased was earning a sum of Rs.40,773/- by marking Ex-P9, pay slip through P.W.2, however, the Tribunal, took only the net salary of 20,830/- into consideration and deducted one-fourth towards "Personal Expenses" and applied multiplier 11 to arrive at the award amount of Rs. 20,62,236/-. When it has been established through Ex-P9 that the gross salary of the deceased was Rs.40,773/-, the same should have been taken into consideration for determining the loss of income. Therefore, this Court fixes the monthly salary of the deceased at Rs.40,733/-. Since the deceased was aged about 51 years and was working as Sub Inspector of Police, 15% has to be added towards "Future Prospects" in the light of the Constitution Bench's judgment of the Honourable Apex Court in Pranay Sethi's case (2017 ACJ 2700). Accordingly, adding 15% towards "Future Prospects", the "Total Monthly Income" of the deceased would be,

	Monthly Income	::	Rs.40,773/-
ADD:	15% towards "Future Prospects"	::	Rs.40,773/- (+) 15%(Rs.40,773/-)
		::	Rs.40,773/- + Rs.6,116/-
		::	Rs.46,889/-
	Annual Income	::	Rs.46,889 x 12
		::	Rs.5,62,668/-

As per the income tax rates applicable at the relevant point of time, the exemption limit was upto Rs.2,50,000/- and therefore, upto Rs.2,50,000/-, there would be no income tax deduction. From Rs.2,50,000/- to Rs.5,00,000/-, income tax deduction would be at 10%, which would be Rs.25,000/- and for the balance amount of Rs.62,668/-, 20% deduction has to be made, which is Rs.12,533/-. Therefore, the total income tax deductible is Rs.37,533/-. After deducting the same, "Annual Income" would be {(Rs.5,62,668/- (-) Rs.37,533/-)} Rs. 5,25,135/-.

6. Since the size of the family of the deceased is three, one-third deduction has to be made towards "Personal Expenses" and "Annual Contribution to the family" works out to,

Annual Income	::	Rs.5,25,135/-
LESS: One-third towards		
"Personal Expenses"	::	Rs.5,25,135/-(-) 1/3(Rs.5,25,135/-)
Annual Contribution	::	Rs.3,50,090/-

The Tribunal rightly adopted multiplier 11, based on the age of the deceased, namely, 51 years, following the judgment of the Honourable Apex Court in Sarla Verma's case (2009 ACJ 1298 (SC)) and adopting the very same multiplier, "Loss of Income" is arrived at as hereunder:

Loss of Income	::	Rs.3,50,090 x 11
	::	Rs.38,50,990/-

7. The Tribunal has awarded Rs.20,000/- towards "Loss of Consortium" and the same is enhanced to Rs.40,000/- as per the Constitution Bench's judgment of the Honourable Apex Court in National Insurance Company Limited V. Pranay Sethi and others reported in 2017 ACJ 2700. No amount was awarded towards "Loss of Estate". Hence, a sum of Rs.15,000/- is awarded under the said head. Only a sum of Rs.10,000/- was awarded cumulatively towards "Transport and Funeral Expenses" and hence, the same is enhanced to Rs.15,000/-.

8. As far as "Loss of Love and Affection" is concerned, only Rs.40,000/- has been awarded by the Tribunal to the other dependents. Therefore, a sum of Rs.50,000/- is awarded to the 3rd appellant /unmarried daughter and the 2nd appellant/married daughter and the 4th appellant/mother would each be entitled to a sum of Rs.25,000/- towards "Loss of Love and Affection".

9. However, it is brought to the notice of this Court that the 4th appellant/mother of the deceased passed away on 15.02.2018 and a memo along with the Death Certificate issued by the Village Administrative Officer, Periyakurichi, Vridhachalam Circle, Cuddalore District, has been filed, stating that the share of the 4th appellant may be given to the appellants 1 to 3. The said memo is recorded. Therefore, Rs.25,000/- awarded by this Court towards "Loss of Love and Affection" to the mother/4th appellant would merge with the entire compensation to be distributed to the other appellants.

10. Summing up the amounts awarded under various heads, the total compensation payable to the appellants works out to Rs.

40,20,990/-. The rate of interest awarded by the Tribunal @ 7.5% per annum remains unaltered. Out of the said sum of Rs.40,20,990/-, the 1st appellant/wife would be entitled to Rs.25,20,900/-, the 2nd appellant/married daughter would be entitled to Rs.3 lakhs and the 3rd appellant/unmarried daughter would be entitled to Rs.12 lakhs.

11. The 2nd respondent Insurance Company is directed to deposit the entire award amount, with interest and costs, after deducting the amount already deposited if any, before the Tribunal, within a period of eight weeks from the date of receipt of a copy of this order.On such deposit being made, the Tribunal is directed to transfer the respective shares of appellants 1 to 3 to their respective bank accounts, as per the apportionment made by this Court, through RTGS, within a period of one week thereon.

12. In the result, the Civil Miscellaneous Appeal is allowed enhancing the compensation awarded by the Tribunal from Rs. 21,32,236/- to Rs.40,20,990/- with interest @ 7.5% per annum. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

The MACT (I Addl. District Judge), Cuddalore.

Copy to:

The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.D. Bhaskaran, Advocate sr.no.34598

C.M.A. No. 3526 of 2017

nr 02/07/2018