IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2018

CORAM

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

C.M.A. No. 790 of 2018

1. Mrs. Rosariyo
2. Jane Alice
3. Savary
4. Mrs. Brijithamma ... Appellants/Claimants

Vs.

1. E. Kannan

2. Reliance General Insurance Co. Ltd.,
Legal Department, Reliance House,
6th Floor, No.6, Haddows Roiad,
Nungambakkam,
Chennai - 6. ... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal as against the judgment and decree dated 29.11.2017 passed in MACT O.P. No. 2635 of 2014 by the Motor Accidents Claims Tribunal (II Court of Small Causes), Chennai.

For Appellants :: Ms.A. Subadra

For Respondents:: Mr.Mohanbabu for
M/s.M.B. Gopalan &
Associates 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.10 lakhs awarded by the Motor Accidents Claims Tribunal (II Court of Small Causes), Chennai, by order dated 29.11.2017 in M.C.O.P. No. 2635 of 2014 for the death of one S. Felix Leo, 42 years, working as an agriculturalist cum building mason, alleged to be earning about Rs.2,50,000/- per annum, in the accident which occurred on 26.04.2014 when the deceased, who was crossing the

GST road near Janakipuram Polymer Company, Kanchipuram District was hit down by a Mahindra Maxi Cab Van, belonging to the 1st respondent and insured with the 2nd respondent Insurance Company.

2. Heard Ms.R. Subadra, learned counsel for the appellants/claimants and Mr.R. Mohan Babu, learned counsel for the 2nd respondent Insurance Company.

3. The only issue in question is with regard to the quantum of compensation.

4. Since the Insurance Company has not filed any appeal against the fastening of negligence on the part of the driver of Mahindra Maxi Cab Van, this Court is not going into the said aspect.

5. In the absence of any concrete proof regarding the annual income of Rs.2,50,000/-, as claimed by the appellants, as the earning of the deceased, being an agriculturalist and building maistry, the Tribunal fixed Rs.6000/- per month as notional income. According to the learned counsel for the 2nd respondent Insurance Company, the said fixation is very low and relying upon the judgment of the Honourable Apex Court in Nita and Others V. Divisional Manager, MSRTC, Kolapur reported in 2015 1 TN MAC 161, she seeks re-determination of the amount at Rs.12,000/- per month.

6. However, Mr.R. Mohan Babu, learned counsel for the 2nd respondent would oppose the said contention and support the award of the Tribunal.

7. The accident occurred in 2014. In 2014, it would have been difficult to get the services of a domestic maid for salary less than Rs.10,000/- per month. Therefore, this Court is of the opinion that Rs.10,000/- would be the appropriate amount to be fixed as the monthly income of the deceased. Even if daily wages is taken as Rs. 350/- per day, it would exceed Rs.10,000/- per month. Therefore, Rs.10,000/- is fixed as the monthly income of the deceased.

8. The age of the deceased was 42 years, at the relevant point of time, as evidenced by Ex-P2, postmortem certificate. Therefore, 25% of the actual income has to be added towards "Future Prospects". Accordingly, adding 25% towards " Future Prospects", the "total monthly income" would be,

Monthly Income fixed	::Rs.10,000/-
ADD: 25% towards "Future Prospects"	::Rs.10,000/- (+) 25%(Rs.10,000/-)
	::12,500/-

The size of the family of the deceased is five and therefore, one-fourth requires to be deducted towards " Personal Expenses". Accordingly, deducting one-fourth, the "Monthly Contribution of the deceased to his family" comes to,

Total Monthly Income	::	Rs.12,500/-
Less:1/4th towards "Personal Expenses"	::	Rs.12,500/- (-) ¼ (Rs.12,500/-)
Monthly Contribution	::	Rs.12,500/- (-) Rs.3125/-
	::	Rs.9,375/-
Annual Contribution	::	Rs.9375 x 12
	::	Rs.1,12,500/-

The appropriate multiplier for the age of 42 years, as per the judgment of the Honourable Apex Court in Sarla Verma's case (2009 (6) SCC 121) is 14. Therefore, adopting the said multiplier, " Loss of Income" is arrived at as hereunder:

Loss of Income	::	Rs.1,12,500 x 14
	::	Rs.15,75,000/-

9. The sum of Rs.40,000/- awarded by the Tribunal to the 1st appellant/wife towards "Loss of Consortium" is confirmed as it is in consonance with the judgment of the Constitution Bench of the Honourable Apex Court rendered in National Insurance Company Limited V. Pranay Sethi and Others reported in 2017 ACJ 2700. Likewise, the amount of Rs.15,000/- granted under the head "Funeral Expenses" stands confirmed. No amount was awarded towards "Loss of Estate". Hence, a sum of Rs.15,000/- is awarded under the said heading. Appellants 2 to 4, who are daughter, father and mother of the deceased have been deprived of his love and affection, for the rest of their life. Though the loss cannot be compensated by any amount of money, in an endeavour to give solace to the daughter and parents of the deceased, a sum of Rs.1,20,000/- is awarded towards "Loss of Love and Affection" as the amount awarded towards "Loss of Love and Affection" is akin to the amount awarded to the spouse towards "Loss of Consortium". Thus, the total compensation payable to the appellants/claimants works out to,

Loss of Income	::	Rs.15,75,000/-
Loss of Consortium	::	Rs. 40,000/-
Loss of Love and Affection to appellants 2 to 4	::	Rs. 1,20,000/-
Funeral Expenses	::	Rs. 15,000/-
Loss of Estate	::	Rs. 15,000/-
Total	::	Rs. 17,65,000/-

10. Out of the total compensation payable, the 1st appellant/wife is entitled to Rs.10 lakhs, the 2nd appellant/daughter is entitled to Rs.5 lakhs and the 3rd and 4th appellants are entitled equally to the balance sum of Rs.2,65,000/-. The rate of interest awarded by the Tribunal @ 7.5% per annum remains unaltered. The appellants shall pay additional court-fee for the enhanced amount, if any.

11. The 2nd respondent 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, after deducting the amount already deposited, if any, within a period of six 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 the appellants to their respective bank accounts, as per the ratio fixed by this Court, through RTGS, within a period of one week thereon.

12. The Civil Miscellaneous Appeal is partly allowed and the award of the Tribunal to the tune of Rs.10 lakhs is enhanced to Rs.17,65,000/- with interest @ 7.5% per annum. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

nv

To

The MACT (II Court of Small Causes),
Chennai.

+1cc to Ms.M.Malar, Advocate Sr.37090
+1cc to M/S.M.B.Gopalan Associates, Advocate Sr.38026

C.M.A. No. 790 of 2018

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srg 16/08/2018