IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Civil Miscellaneous Appeal No.877 of 2017

Meerabai ... Appellant

Vs

1. Samudhra Industries
Plot No.41/42, Women Industrial
Park SIDCO Industrial Estate
Thirumudiwakam
Chennai - 44.

2. The United India Insurance Co. Ltd.
No.75, Shanmugam Road
West Tambaram
Chennai - 45. ... Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the decree and judgment dated 30.11.2016 passed in M.C.O.P.No.3408 of 2013 by the Chief Judge, Motor Accidents Claims Tribunal, Chennai.

For Appellant : Mr.N.Suresh

For Respondents: Mr.S.Arun Kumar (for R2)

R1 - Ex-parte

JUDGMENT

Calling in question the decree and judgment dated 30.11.2016 passed in M.C.O.P.No.3408 of 2013 by the Motor Accidents Claims Tribunal, Chennai, the present civil miscellaneous appeal is filed.

2. The facts in a nutshell are as under: The appellant is the claimant. It is the case of the appellant that on 28.02.2013 at around 22.00 Hours, while her son, Kali Rajan, was walking on left side towards West East of Tiruneermalai Main

Road, Tirumudivakkam, Near Mahalakshmi Nagar, 43rd Street, suddenly the first respondent's motor cycle bearing registration No.TN-11-6302, which was driven in a rash and negligent manner, at high speed in the same direction had hit the appellant's son from backside and in the incident, the appellant's son suffered fatal injuries on the back side of his head, right side hip and right side leg. He became unconscious immediately and his shirt, pant, watch and cellphone worth Rs.5000/- were damaged. It is stated that with the help of passers-by the appellant's son was immediately admitted in Government Hospital, Tambaram (E), Chrompet, Chennai, where he was declared as dead on the spot.

3. It is the case of the appellant that her son (deceased) is the sole bread winner of the family and that the appellant had survived from the income of the deceased, but due to his sudden death, the appellant had lost the income and is suffering for her day to day food and for survival.

4. In such backdrop, the appellant filed M.C.O.P.No.3408 of 2013 seeking compensation of Rs.20,00,000/-.

5. The second respondent insurance company filed a counter affidavit before the Tribunal denying the manner of accident and further stated that there is no proof of age, occupation and income of the deceased and moreover, the appellant has to prove her dependency. It was also averred that the first respondent had violated the policy conditions by permitting one A.Sudakar to driver the vehicle without driving licence. In any event, it was stated that the amount claimed is excessive and the second respondent is not liable to pay compensation.

6. The learned Tribunal, by judgment dated 30.11.2016, awarded compensation of Rs.11,46,000/- to the appellant along with interest at 7.5% per annum from the date of claim petition (30.04.2013) till the date of realization. In the judgment, the Tribunal directed the second respondent to pay the compensation first and then recover the same from the owner of the offending vehicle/first respondent.

7. Assailing the said judgment and decree, the present appeal is filed by the appellant seeking enhancement of compensation.

8. The learned counsel for the appellant vehemently contended that the Court below failed to appreciate that the deceased was employed as casual labour and, therefore, there was no wage register and had erroneously fixed the salary of the deceased at Rs.7,000/- as against Rs.8,900/- per month earned by the deceased. He added that, in fact, P.W.3 (V.Gunasekaran,

Manager/Legal Officer of Sruthi Private Limited) had produced Ex.A13 (Original), which is a series of wage books and wage slips, through P.W.2, before the Tribunal to prove the that the deceased was receiving Rs.8,900/- per month and ESI and EPF deduction was Rs.537/- and net salary was Rs.8,354/-, but the Tribunal had erroneously fixed the salary at Rs.7,000/-. On this plea, it was further submitted that the deceased was of 26 years and was a bachelor and this aspect was also not given due credence.

9. He further submitted that when the appellant had stated that when the appellant had claimed loss of expectation of life to the tune of Rs.17,20,000/-, the Tribunal had erroneously fixed future prospects of Rs.10,500/-. Likewise, it is contended that as against the claim of Rs.3 lakhs towards loss of love and affection, the Tribunal had erroneously awarded a meager sum of Rs.50,000/-.

10. Per contra, the learned counsel appearing for the second respondent insurance company reiterated the contentions raised before the Tribunal and prayed for dismissal of this appeal.

11. I have heard Mr.N.Suresh, learned counsel for the petitioner and Mr.S.Arun Kumar, learned counsel for the 2nd respondent and also perused the materials available on record.

12. The appellant mother claimed compensation of Rs.20,00,000/- for the death of her son Kali Rajan in the accident. In her claim petition, the appellant stated that at the time of accident, her son was aged 24 years and was earning Rs.500/- per day by working as casual labour. To prove the age of the deceased at the time of accident, the appellant has produced Ex.P8-school transfer certificate, wherein the date of birth of the deceased mentioned as 13.03.1987. The accident took place on 28.02.2013. Thus, at the time of accident, the deceased completed 25 years, 11 months 15 days. For the purpose of determination of compensation, the Tribunal has taken the age of the deceased as 26 years. Since at the time of accident the deceased had not completed 26 years and the appellant, who lost her only son who is the bread winner of the family, in order to award just and reasonable compensation to the appellant, the completed age of the deceased could be taken for the purpose of determination of compensation in the peculiar circumstances. Accordingly, the age of the deceased is fixed as 25 years.

13. In her evidence, P.W.1 the mother of the deceased deposed that her son was earning Rs.500/- per day by working in M/s.Sruthi Total HR Private Limited, Chennai as labour. She had also produced Ex.P13-salary slip through P.W.2, who is the Manager/Legal Officer of M/s.Sruthi Total HR Private Limited,

Chennai. In his evidence, P.W.2 deposed that the deceased was working as labour in their company and at the time of accident, he was drawing the salary of Rs.8,900/- per month. However, the Tribunal disbelieved the evidence of P.W.2 by observing that P.W.2 has not produced the wage register to support his evidence and also since in Ex.P13-salary slip no appointment date was found place, the Tribunal has taken the monthly income of the deceased at Rs.7,000/-. The said approach adopted by the Tribunal is not acceptable for the reason that the appellant has examined the Manager/Legal Officer of the company in which the deceased was working and through him, Ex.P13-salary slip was marked. In his evidence also P.W.2/Manager of the company categorically deposed that the deceased Kalirajan was working as labour in the company and earned Rs.8,900/- per month. The Tribunal ought to have believed the evidence of P.W.2. Because of non-mentioning of date of appointment in Ex.P13-salary slip, the Tribunal ought not to have disbelieved Ex.P13-salary slip.

14. The learned counsel for the appellant submitted that at the time of accident, the deceased was drawing salary of Rs.8,900/- per month and after deducting ESI and EPF subscription to the tune of Rs.537/-, the deceased was getting the salary of Rs.8,354/- per month. To rebut the same, the second respondent insurance company has not produced any material. Considering the evidence of P.W.2 and Ex.P13-salary slip, this Court comes to the conclusion that at the time of accident the deceased was working as labour in M/s.Sruthi Private Limited and was drawing net salary of Rs.8,354/- per month after deducting Rs.537/- towards contributions made to ESI and EPF.

15. In the case on hand, if the deceased was alive, he would have earned more. Therefore, it would be appropriate to add 50% of salary towards future prospects. Taking the monthly salary at Rs.8,354/- and adding 50% of the same, the monthly income of the deceased is fixed at Rs.12,531/-.

16. The Tribunal deducted 50% towards personal expenses. At the time of accident, the deceased was a bachelor and the deduction to be made is 50%. However, considering the pathetic situation of the family of the appellant, who lost her son at the age of 25 years, it would be appropriate to deduct 40% towards personal expenses. Deducting 40%, the monthly income of the deceased would come to Rs.7,519/- per month. Accordingly, for determining the compensation, the monthly income of the deceased after deducting personal expenses is fixed at Rs.7,519/- and the annual income is fixed at Rs.90,228/-

(Rs.7,519 x 12 = Rx.90,228/-).

17. This Court fixed the age of the deceased at the time of accident as 25 years. As per the decision of the Hon'ble Supreme Court in Sarla Verma and others v. Delhi Transport Corporation and another, reported in 2009 (2) TN MAC 1 (SC), for the age group 21-25, the proper multiplier to be adopted is "18". Adopting multiplier "18", the loss of dependency is calculated at Rs.16,24,104/- (Rs.90,228 x 18 = Rs.16,24,104/-).

18. The Tribunal awarded Rs.50,000/- towards loss of love and affection to the appellant. As stated supra, the appellant has lost her son at the age of 25 years. Therefore, a sum of Rs.50,000/- awarded by the Tribunal towards loss of love and affection is confirmed. The Tribunal awarded Rs.25,000/- towards funeral expenses. Since a sum of Rs.25,000/- awarded by the Tribunal towards funeral expenses is reasonable, the same is also confirmed. Thus, the total compensation of Rs.11,46,000/- awarded by the Tribunal is enhanced to Rs.16,99,104/- as under:

Heads	Rs.
Loss of dependency	16,24,104.00
Loss of love and affection	50,000.00
Funeral expenses	25,000.00
Total	16,99,104.00

19. Since at the time of accident the offending vehicle was not having valid insurance, the Tribunal directed the second respondent insurance company to pay the compensation first and then recover the same from the owner of the vehicle/first respondent. In the case on hand nobody questioned the pay and recover ordered by the Tribunal. Hence, this Court does not want to elaborate upon the said aspect and the said direction of the Tribunal is unaltered.

20. In the result, the Civil Miscellaneous Appeal is partly allowed with proportionate costs. The compensation of Rs.11,46,000/- awarded by the Tribunal is enhanced to Rs.16,99,104/- payable with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. The second respondent is directed to deposit the enhanced compensation along with interest within a period of eight weeks from the date of receipt of a copy of this order as per the mode stated by the Tribunal and then recover the same from the first respondent/owner. On such deposit, the appellant is entitled to

withdraw the amount with accrued interest on filing proper cheque application before the Tribunal.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

vs

To

The Chief Judge,
The Motor Accident Claims Tribunal,
Chennai.

Copy To
The Section Officer,
VR Section, High Court,
Madras. (2 Copies)

+2cc to Mr.N.Suresh, Advocate, S.R.No.63040
+1cc to Mr.S.Arun Kumar, Advocate, S.R.No.63170

C.M.A.No.877 of 2017

NA(Co)
CS/07/12/2018