IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CMA No.954 of 2017

1.Gandhimathi
2.Gayathiri
3.Jayavenkattakumar
4.Nachammal
W/o.Muthusamy Gounder (died) .... Appellants

-vs-

1.The Manager
Iffco Tokio General Insurance Company Ltd.,
KBS Arcade No.2, 2nd Floor,
4/104 A Kovai Main Road, Karur, Tamil Nadu.

2.R.Balusamy
3.S.Boomathi .... Respondents

(R2 and R3 are given up since they are set exparte in lower court vide separate memo filed)

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, 1988 against the judgment and decree dated 25.09.2015 passed in M.C.O.P.No.203 of 2014 on the file of the Motor Accidents Claims Tribunal, Special District Court, Erode.

For Appellants : Mr.R.Kannan
for Mr.V.Regunathan

For Respondents: Ms.Saraswathi
for M/s.C.R.Krishnamoorthi(For R1)

Given up (For R2 & R3)

J U D G M E N T

[Judgment of the Court was delivered by R.SUBRAMANIAN,J.]

The claimants who are the legal representatives of one N.M.Thangaraj who died in a motor accident that occurred on 08.02.2014 are the appellants. The Tribunal awarded a total compensation of Rs.10,36,937/-. Claiming that the compensation awarded is low, the claimants are before this Court, seeking enhancement.

2.The Tribunal took the annual income of the deceased at Rs.4,57,749/- as per Ex.P21, Income Tax Returns for the year 2012-13. The Tribunal however took into account only 30% of the same as the contribution of the deceased, N.M.Thangaraj in as much as the same was business income. Thus the annual income of N.M.Thangaraj was fixed at Rs.1,37,325/- after deducting ¼ towards personal expenses, the Tribunal arrived at the loss of dependency at Rs.1,02,933/-. Applying the multiplier of '9', the Tribunal worked out the total loss of dependency at Rs.9,26,937/-. The Tribunal awarded a sum of Rs.25,000/- towards funeral expenses, Rs.50,000/- towards loss of love and affection, Rs.10,000/- towards transportation charges, Rs.25,000/- towards loss of consortium. Thus, the total award amount worked out to Rs.10,36,937/-.

3.We have heard Mr.R.Kannan, for Mr.V.Regunathan, learned counsel appearing for the appellants and Ms.Saraswathi, learned counsel for the 1st respondent/Insurance Company. Since the respondents 2 and 3 had remained exparte before the Tribunal, notice to them is dispensed with.

4.Mr.R.Kannan, learned counsel for the appellants would contend that the Tribunal erred in taking into account only 30% of the income shown in Ex.P21 as the contribution of Mr.N.M.Thangaraj, contending that he had very vast experience in the business and the business would not be the same after his death.

5.We find some force in the submissions of the learned counsel. It is seen that the deceased was aged about 58 years and he was running the business for more than three decades. We are therefore of the opinion that 50% of the income should be taken as contribution of the deceased to the business income. Thus, worked out the 50% of the returned income of Rs.4,57,749/- will be Rs.2,28,874.50/-, which is rounded off to Rs.2,28,875/-. Considering the age of the deceased, 10% is added towards future prospects which takes the annual income to Rs.2,51,762. Deducting ¼ towards personal expenses and applying the multiplier of '9', the loss of dependency works out to Rs.16,99,398/- and the same is rounded off to Rs.17,00,000/-.The Tribunal has awarded a sum of Rs.50,000/- towards loss of love and affection, Rs.25,000/- towards funeral expenses and Rs.10,000/- towards loss of transportation. The award under these heads are confirmed. The Tribunal has awarded only Rs.25,000/- towards loss of consortium and the same is enhanced to Rs.40,000/-, in view of the judgment of the Hon'ble Supreme

Court in the case of National Insurance Co. Ltd Vs. Pranay Sethi and others reported in 2018 (1) LW 331. The Tribunal has not awarded any amount towards loss of estate. We therefore award a sum of Rs.15,000/- on the same head. Thus, worked out total compensation is Rs.18,40,000/-.

6.For the forgoing reasons, the appeal is partly allowed. The award of the Tribunal is modified as Rs.18,40,000/- with 7.5% interest from the date of petition till the date of deposit. The Insurance Company is directed to deposit the enhanced compensation as per the modified award within a period of six weeks from the date of receipt of the copy of this judgment. The claimants are permitted to withdraw the same on such deposit. The compensation is apportioned as follows: the 1st appellant/wife would be entitled to a sum of Rs.6,40,000/ with proportionate interest, the children /appellants 2 and 3 would be entitled to Rs.5,00,000/- each with proportionate interest and the 4th appellant/mother would be entitled to Rs.2,00,000/- with proportionate interest. While calculating the interest, the delay of 133 days in filing the appeal will stand excluded. However, there is no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-)

//True Copy//

Sub Assistant Registrar

gsa

To

1.The Motor Accidents Claims Tribunal,
Special District Judge,
Erode.

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

+1cc to Mr.C.R.Krishnamurthy, Advocate, S.R.No. 62371
+1cc to Mr. M.V.Ragunathan, Advocate, S.R.No. 62039

CMA No.954 of 2017

VSN(CO)
GN(23/10/2018)