IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED:17.01.2018
CORAM
THE HONOURABLE MR. JUSTICE R.SUBBIAH
AND
THE HONOURABLE MR. JUSTICE P.D. AUDIKESAVALU
C.M.A. No. 1761 of 2013
&
M.P. No. 1 of 2013

The Divisional Manager,
HDFC ERGO General Insurance
Company Limited,
No. 301, Embassy Classic,
No.11, Vittal Mallya Road,
Bangalore - 560 001. ..Appellant/2nd Respondent

Vs.

1. Malathi
2. Minor Gokul Aswanth
3. Emaroja
4. Natarajan

(minor respondent rep. by his mother
and natural guardian and next friend
Malathi, 1st respondent herein) ..Respondents/Claimants

Prayer: Civil Miscellaneous Appeal as against the judgment and decree dated 16.06.2012 passed in M.C.O.P. No. 580 of 2009 by the Motor Accidents Claims Tribunal (Principal District Judge), Vellore.

For Appellant : Mrs.R. Sreevidhya

For Respondents: : Mr.C. Prabakaran

J U D G M E N T

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

This Civil Miscellaneous Appeal has been filed by the Insurance Company questioning the quantum of compensation awarded by the Motor Accidents Claims Tribunal (Principal District Judge), Vellore, to the tune of Rs. 14,60,536/-, in and by award dated 16.06.2012 in M.C.O.P. No. 580 of 2009.

2. The respondents herein, who are wife, minor son and parents of the deceased, namely, Mohan, are the claimants before the Tribunal.

3. The case of the claimants before the Tribunal was that when the deceased Mohan, was riding his motor cycle bearing

Registration No. TN-23-B-6043, on the left side of the road at Vellore to Arni road, Sathumadurai Village, on 15.08.2009, at about 6.30p.m. a Tata Sumo Car bearing Registration No. TN-23-J-2700, driven by its driver in a rash and negligent manner, dashed against the motor cycle and caused the accident, in which the deceased sustained grievous injuries and later on, succumbed to the injuries in the hospital. Hence, the claim petition was filed by the claimants seeking compensation of Rs.30 lakhs and the Tribunal, on consideration of the entire evidence on record, awarded a sum of Rs.14,60,536/-. Challenging the same, the present appeal has been filed by the Insurance Company.

4. Since the present appeal has been filed questioning only the quantum of compensation awarded by the Tribunal, it is not necessary for this Court to traverse into other aspects of the award.

5. The only contention of the learned counsel for the appellant is that though it was claimed by the claimants that the deceased was earning a sum of Rs.30,000/- per month by working as an Executive Advisor in Peerless Insurance Company and also by doing brick business, real estate business and agriculture business, no documentary evidence was produced to prove the same. Therefore, appropriate reduction has to be made with regard to the income fixed by the Tribunal.

6. Per contra, the learned counsel for the respondents/claimants would support the award passed by the Tribunal.

7. Keeping the submissions of the learned counsel on either side, we have carefully gone through the entire materials on record.

8. On a perusal of the entire materials on record, we find that as rightly contended by the learned counsel for the appellant, no documentary evidence was produced by the claimants to show that the deceased was earning a sum of Rs.30,000/- by carrying on those business, which they have claimed and at the same time, we also find that the Tribunal, had, as a matter of fact, observed that there was no conclusive document, in the form of income certificate, to show that the deceased was earning a sum of Rs.30,000/- per month and therefore, had placed reliance on Ex-P6, Income Tax Returns pertaining to the period 2007-2008, prior to the death of the deceased and had taken the annual income of the deceased as Rs.1,09,610/-. In our considered opinion, we do not find any infirmity in the same since the said amount was noted in Ex-P6 to be the annual income of the deceased. Thereafter, the Tribunal had deducted one-fourth towards "Personal Expenses" of the deceased, (ie),

(Rs.1,09,610/- (-) ¼ (Rs.1,09,610/-) and arrived at Rs.82,207.50, rounded off to Rs.82,208/- as "Annual Loss of Income to the family". Based on the age of the deceased, namely, 29 years, multiplier 17 was rightly adopted by the Tribunal and "Total Loss of Income to the Family" was calculated as Rs.13,97,536/- (Rs.82,208 x 17). Further, the Tribunal has awarded Rs.20,000/- towards "Loss of Consortium", Rs.10,000/- each to the wife and the minor son and Rs.5,000/- each to the parents of the deceased towards "Loss of Love and Affection", totalling to Rs.30,000/- under the said head, Rs.3,000/- towards "Transportation Expenses" and Rs.5,000/- towards "Funeral Expenses" and in all, a sum of Rs. 14,60,536/- was awarded as compensation together with interest @ 7.5% per annum. Absolutely, we do not find any infirmity in the award passed by the Tribunal as it is just and reasonable and there is no need for this Court to entertain this appeal. Hence, the Civil Miscellaneous Appeal is dismissed. No costs. Connected M.P. is closed.

9. Since it is submitted that the appellant Insurance Company has already deposited the entire award amount with interest and costs before the Tribunal, the major claimants are permitted to withdraw their respective shares, as per the apportionment of the Tribunal, after deducting the amount that has been already withdrawn by them, if any. The share of the minor claimant shall be deposited in any one of the Nationalised Banks in interest bearing Fixed Deposit till he attains majority. The 1st respondent/mother of the minor claimant is permitted to withdraw the interest accruing on such deposit once in three months.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To
The Principal District Judge,
Motor Accident Claim Tribunal,
Vellore.

+1cc to Mr.C.Prabakaran, Advocate Sr.No.3583/18
+1cc to M/s.R.Sreevidhaya, Advocate SR.No.4242/18

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VR Section Officer,
High Court, Madras (2 copies)
SV(CO)
sm:16.2.2018