IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2018

CORAM

THE HON'BLE MR.JUSTICE R.SUBBIAH
and
THE HON'BLE MR.JUSTICE P.D.AUDIKESAVALU

C.M.A.No.3518 of 2013

1.P.Selvam
2.S.Chandra
3.S.Indira
4.P.Jenifer Mercy ... Appellants

Vs.

1.Sri Venkateswara Traders,
No.110, Peravallur Red Hills Road,
Lakshmipuram,
Chennai-600 099.
(1st respondent was set exparte in the Trial Court)

2.Bajaj Allianz General Insurance Co. Ltd.,
No.25/26, Prince Towers, College Road,
Nungambakkam, Chennai. ... Respondents

Civil Miscellaneous Appeals have been filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 29.08.2013 in M.A.C.T.O.P.No.4098 of 2010 passed the Motor Accidents Claims Tribunal (Chief Judge, Small Casues Court), Chennai.

For Appellants : Mr.C.Munusamy
For Respondents: Mr.S.Arunkumar (For R2)

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

Not being satisfied with the quantum of compensation awarded by the Motor Accidents Claims Tribunal (Small Causes Court) Chennai, in and by award dated 29.08.2013 in M.C.O.P.No.4098 of 2010, the claimants have come forward with the present appeal before this Court.

2.The claimants are the father, mother, sister and wife of the deceased Ganesan @ Antony Ganesan, who had died in a motor accident that had occurred on 20.10.2010 involving the vehicle bearing Reg.No.TN-05-F-7707 owned by the 1st respondent and insured with the 2nd respondent/Insurance Company.

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

4.The Tribunal has passed an award for a total sum of Rs.15,33,000/- as compensation to the claimants. The break up details of the compensation amount awarded by the Tribunal are as follows_

| | | |
|---|---|---|
| Loss of dependency | = Rs. | 14,58,000/- |
| Loss of consortium | = Rs. | 25,000/- |
| Loss of love and affection | = Rs. | 25,000/- |
| Loss of estate | = Rs. | 10,000/- |
| Funeral expenses | = Rs. | 10,000/- |
| Transportation | = Rs. | 5,000/- |
| Total | = Rs. | 15,33,000/- |

5.As regards the quantum of compensation, it is the case of the claimants before the Tribunal that the deceased Ganesan @ Antony Ganesan was aged 24 years at the time of accident and he was working as Engineer in a private company viz., Aruchem Engineers Private Ltd and earning a sum of Rs.25,400/- per month. In order to prove the income earned by the deceased, one Muthukumar, Senior Engineer in Aruchem Engineers Private Ltd, was examined as P.W.3, through whom Ex.P.15-appointment order, Ex.P.18-Salary Certificate, Ex.P.19-pay slip for the month of July, 2010 were marked. In his cross-examination, P.W.3 has admitted that as per the accounts, the annual income of the deceased was Rs.1,80,000/-, therefore, income tax was not deducted from his salary.

6.But, on the side of the Insurance Company, an official from the Employees State Insurance Corporation viz., one Rangaraj was examined as R.W.1 and he had deposed evidence to the effect that as per the records maintained in his department, the deceased was working as Site Engineer in the said company and that the death of the said Ganesan was reported through Ex.R.1-Form 16. As per Form-16 maintained during the course of business as per statute, the gross wages of the deceased Ganesan from October-2009 to March-2010 for a period of six months was Rs.36,000/- and he was paid for a period from October-2010 to March-2011 for 19 days a sum of Rs.3,738/-. It is further deposed by R.W.1 that a sum of Rs.107/- per month was recovered from the said Ganesan under ESI Scheme. In view of the evidence of R.W.1, the Tribunal had totally rejected the evidence of P.W.3 and fixed a sum of Rs.6,000/- as monthly income of the deceased.

7.Now, it is the submission of the learned counsel for the appellants/claimants that the sum of Rs.6,000/- fixed by the Tribunal as monthly income of the deceased is on the lower side; that considering the fact that the deceased was an Engineer, at least a minimum sum of Rs.10,000/- ought to have been fixed by the Tribunal as monthly income of the deceased to arrive at a just compensation. Thus, the learned counsel for the appellants/claimants sought for enhancement of the compensation amount awarded by the Tribunal.

8.Per contra, the learned counsel appearing for the Insurance Company/2nd respondent herein made his submissions supporting the award passed by the Tribunal.

9.Keeping in view the submissions made on either side, We have carefully gone through the entire materials available on record.

10.In order to prove the income earned by the deceased, on the side of the claimants before the Tribunal, one Muthukumar, Senior Engineer in Aruchem Company, was examined as P.W.3. But, since there were discrepancies in his evidence, the Tribunal has rejected his evidence and fixed a sum of Rs.6,000/- as monthly income of the deceased, based on the evidence of R.W.1.

11.But, We in our considered opinion, considering the qualification of the deceased, who is an Engineer, the Tribunal ought to have fixed atleast a sum of Rs.8,000/- as monthly income of the deceased. Hence, We are of the opinion that the amount awarded by the Tribunal under the loss of dependency is required proper enhancement.

12.As stated supra, considering the qualification of the deceased, a sum of Rs.8,000/- is hereby taken as monthly income. In view of the recent decision of the Hon'ble Supreme Court reported in 2017(2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi], it would be appropriate to add 40% of the monthly income towards future prospects. If 40% amount is added, the total income comes to Rs.11,200/- (8,000 + 3200). If 1/4th amount is deducted towards personal expenses, the balance amount is Rs.8,400/- (11200 - 2800), which could be taken as monthly loss of contribution to the family. Then, the annual loss of contribution to the family works out to Rs.1,00,800/- (8400 x 12). Since the deceased was aged 24 years at the time of accident, the proper multiplier that has to be applied in this case is 18. If multiplier 18 is applied, the total loss of dependency works out to Rs.18,14,400/- (1,00,800 x 18). Thus, the sum of Rs.14,58,000/- awarded by the Tribunal under the head of Loss of Dependency is hereby enhanced to Rs.18,14,400/-. Further, We find that a sum of Rs.25,000/- awarded by the Tribunal for loss of love and affection appears to be on the lower side. Hence, the same is hereby enhanced to Rs.30,000/-. Except these modifications, the compensation amounts awarded by the Tribunal under other heads remain unaltered.

13.Accordingly, the total compensation amount of Rs.15,33,000/- awarded by the Tribunal is hereby modified and enhanced to Rs.18,89,400/-. The break up details of the enhanced compensation amount are as follows_

| | |
|---|---|
| Loss of dependency | = Rs.18,14,400/- |
| Loss of consortium | = Rs. 25,000/- |
| Loss of love and affection | = Rs. 30,000/- |
| Loss of estate | = Rs. 10,000/- |
| Funeral expenses | = Rs. 10,000/- |
| Transportation | = Rs. 5,000/- |
| Total | = Rs.18,89,400/- |

14.In fine, the Civil Miscellaneous Appeal is allowed in part and the compensation amount of Rs.15,33,000/- (Rupees Fifteen Lakhs and Thirty Three Thousand only) awarded by the Tribunal is hereby modified and enhanced to Rs.18,89,400/- (Rupees Eighteen Lakhs Eighty Nine Thousand and Four Hundred Only). Out of the the said amount, the 1st claimant/father is entitled to Rs.2.5 lakhs, the 2nd claimant/mother is entitled to Rs.3.5 lakhs and the 4th claimant/wife is entitled to the balance amount. The 3rd claimant/sister is not entitled to compensation amount. The 2nd respondent/Insurance Company is directed to deposit the enhanced compensation amount, after deducting the amount if any already deposited, with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. On such deposit being made, the claimants 1, 2 & 4 are entitled to withdraw their shares with proportionate interest by making necessary application before the Tribunal. No costs.

s/d-
Assistant Registrar(CS VIII)



True Copy

Sub-Assistant Registrar

To,
1. The Chief Judge
   The Motor Accidents Claims Tribunal,
   (Small Causes Court), Chennai.

2. The Section officer
   VR Section, High Court, Madras(2 copies)

+1 CC to Mr.S. Arunkumar, advocate sr 376.
+1 CC to Mr.L.P. Shanmugasundaram, Advocate sr 349.



BR(CO)
SP(13/04/2018)