IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.01.2018

CORAM

THE HONOURABLE MR. JUSTICE R. SUBBIAH
AND
THE HONOURABLE MR. JUSTICE P.D. AUDIKESAVALU

C.M.A. Nos. 73 & 711 of 2012
&
M.P. Nos. 1 of 2012

C.M.A. No. 73 of 2012
The Oriental Insurance Co. Ltd.
United India Building, Esplanade,
Chennai – 600 108. ..Appellant

Vs.

1. K. Selveswari
2. K. Thangapoo
(R2 declared as major and R1 (Mother – K. Selveswari) discharged from guardianship of R2 vide order of Court dated 07.08.2015 in M.P. Nos 1 & 2 of 2015)

3. K. Mohana (Minor)
(3rd respondent minor represented by Mother & Next friend Selveswari)

4. M. Rajammal
5. Mr.S. Mohamed Pithi
6. M. Balaraman
(5th respondent ex parte in Lower Court) ..Respondents

Prayer: Civil Miscellaneous Appeal as against the judgment and decree dated 02.02.2011 in M.C.O.P. No. 3446 of 2006 by the Motor Accidents Claims Tribunal (Additional District Court, Fast Track Court No.II), Chennai.

For Appellant :: Ms.C. Harini for
Mr.N. Vijayaraghavan

For Respondents:: Mr.U.M. Ravichandran for
R1 to R4

C.M.A. No. 711 of 2012

1. K. Selveswari
2. K. Thangapoo
(2nd appellant declared as major and Appellant 1 (Mother – K. Selveswari) discharged from guardianship of Appellant 2 vide order of Court dated 04.01.2018 in M.P. Nos 1 & 2 of 2015)

3. K. Mohana (Minor)
(3rd appellant minor represented by Mother & Next friend Selveswari)

4. M. Rajammal ..Appellants

Vs.

1. S. Mohammed Pithi

2. The Oriental Insurance Co. Ltd.
United India Building, Esplanade,
Chennai – 600 108.

3. M. Palaraman ..Respondents

Prayer:Civil Miscellaneous Appeal as against the judgment and decree dated 02.02.2011 in M.C.O.P. No. 3446 of 2006 by the Motor Accidents Claims Tribunal (Additional District Court, Fast Track Court No.II), Chennai.

For Appellants :: Mr.U.M. Ravichandran
For Respondents:: Ms.C. Harini for Mr.N. Vijayaraghavan for R2

J U D G M E N T
(Judgment of the Court was delivered by R. SUBBIAH,J.)

C.M.A. No. 73 of 2012 has been filed by the Insurance Company challenging the quantum of compensation awarded by the Motor Accidents Claims Tribunal (Additional District Court, Fast Track Court II), Chennai, in and by award dated 02.02.2011 in M.C.O.P. No. 3446 of 2006. As against the very same award, the claimants have also filed C.M.A. No. 711 of 2012 seeking enhancement. As both the appeals arise out of the award dated 02.02.2011, they are disposed of by this common judgment.

2. The claimants before the Tribunal are wife, minor daughters and mother of the deceased, by name, Hansdurai. The claim petition was filed seeking compensation to the tune of Rs. 21,00,000/- for the death of the said Hansdurai, who lost his life in the accident that had occurred on 18.07.2005, at about 10.45 a.m., while riding his motor cycle bearing Registration

No. TN-22-U-0730, along Medavakkam High Road, when it was hit by a lorry bearing Registration No. TN-31-9201, belonging to the 1st respondent. The Tribunal, on appreciation of oral and documentary evidence, while holding that it was the driver of the lorry, who was responsible for the accident, awarded a sum of Rs. 16,37,488/- together with interest @ 9% per annum as compensation.

3. Since the appeals have been filed challenging only the quantum of compensation awarded, it is not necessary for us to traverse into other aspects of the award.

4. The main contention of the learned counsel for Insurance Company is that the sum of Rs.1,49,765/- determined by the Tribunal as the annual income of the deceased is on the higher side and without any basis. Hence, the said amount needs to be reduced.

5. Per contra, it is submitted by the learned counsel for the claimants that the sum of Rs.1,49,765/- determined by the Tribunal as annual income of the deceased is supported by documentary evidence, namely, Exs-P7 & P8, Income Tax Returns pertaining to the years 2003-2004 & 2004-2005. At the same time, the Tribunal has not considered the aspect of "Future Prospects" of the deceased, who was aged about 37 years. Therefore, by adding towards Future Prospects, the compensation amount has to be enhanced.

6. We have considered the rival submissions and have also gone through the entire materials on record.

7. It is the case of the claimants before the Tribunal that the deceased was carrying on business under the name "M.H. Centering" and was supplying centering sheets, slabs,sticks etc on hire for about 10 years and in order to prove the income of the deceased, the claimants had produced income tax returns pertaining to the years 2003-2004 & 2004-2005, which were marked as Exs-P7 and P8. In Ex-P7, the annual income of the deceased was shown as Rs.1,25,765/- for the year 2003-2004 and in Ex-P8, the annual income was shown as Rs.1,49,765/- for the year 2004-2005. Considering the said exhibits, the Tribunal fixed the annual income of the deceased as Rs.1,49,765/-. We find that the sum of Rs.1,49,765/- awarded by the Tribunal is based on documentary evidence and and we find no reason to differ from the same and therefore, we are not inclined to accept the submission made by the learned counsel for the Insurance Company in this regard.

8. But, the same time, as rightly contended by the learned counsel for the claimants, we find that the Tribunal has not

considered the " Future Prospects" of the deceased, who lost his life at the age of 37 years. As per the recent Full Bench's judgment of the Honourable Apex Court rendered in National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC), in respect of those victims, who are self employed or on a fixed salary and aged below 40 years, 40% of the income has to be added towards " Future Prospects". Therefore, applying the same and adding 40% towards " Future Prospects", the total annual income of the deceased would be,

Total Annual Income	::	Rs.1,49,765/-(+)40% (Rs.1,49,765/-)
	::	Rs.1,49,765/- (+) Rs.59,906/-
	::	Rs. 2,09,671/-

9. As regards "Personal Expenses", though the Tribunal has deducted one-third towards "Personal Expenses" of the deceased, considering the number of dependants, namely, four, as per the judgment of the Honourable Apex Court in Smt. Sarla Verma and Others V. Delhi Transport Corporation and another reported in 2009 6 SCC 121, one-fourth deduction would be appropriate. Therefore, deducting one-fourth towards "Personal Expenses" of the deceased, "Annual Contribution of the deceased to his family" would be,

= Rs. 2,09,671/- (-) ¼ (Rs. 2,09,671/-)
= Rs.2,09,671/- (-) Rs.52417/-
=Rs.1,57,253/-

Considering the age of the deceased, namely, 37years, the appropriate multiplier, as per the judgment of the Honourable Apex Court in Sarla Verma's case would be 15. Therefore, applying the same, " Loss of Dependency" would be,

Loss of Dependency	=	Rs.1,57,253 x 15
	=	Rs.23,58,795/-

10. As far as the amounts awarded by the Tribunal under other conventional heads are concerned, in the aforesaid Full Bench's judgment of the Honourable Supreme Court, at paragraph No.54, it has been held as follows:

> 54. As far as the conventional heads are concerned, we find it difficult to agree with the view expressed in Rajesh. It has granted Rs. 25,000/- towards funeral expenses, Rs. 1,00,000/- loss of consortium and Rs. 1,00,000/- towards loss of care and guidance for minor children. The head relating to loss of care and guidance for minor children does not exist. Though Rajesh refers to Santosh Devi, it does not seem to follow the same. The conventional and traditional heads, needless to say, cannot be determined on percentage basis because that would not be an acceptable criterion. Unlike

determination of income, the said heads have to be quantified. Any quantification must have a reasonable foundation. There can be no dispute over the fact that price index, fall in bank interest, escalation of rates in many a filed have to be noticed. The court cannot remain oblivious to the same. There has been a thumb rule in this aspect. Otherwise, there will be extreme difficulty in determination of the same and unless the thumb rule is applied, there will be immense variation lacking any kind of consistency as a consequence of which, the orders passed by the tribunals and courts are likely to be unguided. Therefore, we think it seemly to fix reasonable sums. It seems to us that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The principle of revisiting the said heads is an acceptable principle. But the revisit should not be fact-centric or quantum-centric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years. We are disposed to hold so because that will bring in consistency in respect of those heads."

Following the dictum laid down by the Honourable Apex Court, the amounts awarded towards " Loss of Consortium" and " Funeral Expenses" are enhanced to Rs.40,000/- and Rs.15,000/- respectively. Since no amount was awarded towards " Loss of Estate", a sum of Rs.15,000/- is awarded under the said head. The amount of Rs.20,000/- awarded under the caption" Loss of love and affection" stands deleted. Hence, the total compensation amount payable to the claimants is as follows:

Loss of Dependency	::	Rs.23,58,795/-
Loss of Consortium	::	Rs. 40,000/-
Funeral Expenses	::	Rs. 15,000/-
Loss of Estate	::	Rs. 15,000/-
Total	::	Rs.24,28,795/-

Thus, the sum of Rs. 16,37,488/- awarded by the Tribunal is enhanced to Rs. 24,28,795/-. The rate of interest awarded by the Tribunal @ 9% per annum is reduced to 7.5% per annum.

11. Since the compensation sought by the claimants is only to the tune of Rs.21 lakhs in the claim petition and the enhanced amount of compensation that has been awarded by this

Court, is more than what has been claimed, the claimants shall pay appropriate additional court-fee for the enhanced amount.

12. The Insurance Company is directed to deposit the entire amount, as per the modified award passed by this Court, along 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 wife and mother of the deceased/1st and 4th respondents in C.M.A. No. 73/2012 would be entitled to Rs.10 lakhs and Rs.2 lakhs respectively and after deducting the amount that has been already withdrawn, they are permitted to withdraw the respective balance amounts. The remaining award amount shall be equally shared by the daughters of the deceased/2nd and 3rd respondents in C.M.A. No. 73/2012. Since the 2nd respondent in C.M.A. No. 73/2012 has attained majority, she is permitted to withdraw her share of the amount. The share of minor claimant shall be deposited in anyone of the Nationalised Banks in interest bearing Fixed Deposit till she attains majority and the mother of the minor claimant is permitted to withdraw interest accruing on such deposit once in three months.

13. In the result, C.M.A. No.73/2012 is dismissed and C.M.A. No. 711/2012 is allowed. No costs. Connected M.Ps. are closed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To
1.The MACT (Addl. Dist. Court, FTC II)
Chennai.

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

+1cc to M/s.N.Vijayaraghavan, Advocate Sr.No.719
+1cc to M/s.N.Vijayaraghavan, Advocate Sr.No.718
+1cc to Mr.A.Shanmugaraj, Advocate Sr.No.931

RR(CO)
sm:26.10.2018

C.M.A. Nos. 73/2012 &

711/2012