BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.07.2018

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CMA(MD)No.1380 of 2016
and
CMP(MD)Nos.11487 of 2016 and 3445 of 2018

The Manager,
ICICI Lombard General Insurance Co.Ltd.,
Zenith House,
Keshav Rao Khade Marg,
Mahalakshmi, Mumbai 400 034. ... Appellant/2nd Respondent

vs.

1)Minor Hemanth Krishna
(Rep by guardian & grandfather Samiappan)
2)Sadayammal
3)Samiappan ... Respondents 1 to 3/Petitioners
4)S.H.Iqbal

5)The Manager,
United India Insurance Co.Ltd.,
12-A, Kavai Road, P1A Building,
2nd Floor, Karur. ... Respondents 4&5/Respondents 1&3

6)The Manager,
HDFC General Insurance Co.Ltd.,
6th Floor, Leela Business Park,
Andheri Kurla Road,
Andheri(E), Mumbai 400 059. ... 6th Respondent/4th Respondent

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the fair and decreetal order dated 11.11.2010 made in MCOP.No.419 of 2008 on the file of Motor Accident Claims Tribunal (District Court), Karur.

For Appellant : Mr.S.Srinivasa Raghavan
For R1 to R3 : Mr.S.Gokulraj
For R5 : Mr.J.S.Murali
For R6 : Mr.M.Suri

JUDGMENT

This appeal has been filed against the fair and decreetal order dated 11.11.2010 made in MCOP.No.419 of 2008 on the file of Motor Accident Claims Tribunal (District Court), Karur.

2.In an accident which occurred on 07.07.2008, one Periasamy died. Minor son and parents of the deceased filed a claim petition in MCOP.No.419 of 2008 on the file of Motor Accident Claims Tribunal (District Court), Karur. The appellant insurance company resisted the claim. Considering the oral and documentary evidence, the Tribunal directed the appellant to pay compensation of Rs.17,00,000/- with interest at 7.5% per annum. Challenging the quantum of compensation, the appellant has filed this appeal.

3.Learned counsel for the appellant would submit that there was no total loss of income from the business run by the deceased on his death, since the business can be continued by the legal representatives of the deceased by employing others and by making supervision of the business and hence, fixation of Rs.1 lakh as annual income of the deceased, is excessive and arbitrary. He further submitted that grant of Rs.1 lakh for non-pecuniary and conventional damages is also excessive and requires reduction.

4.Heard the learned counsel for the parties and perused the materials available on record.

5.As regards the quantum of compensation, though the respondents 1 to 3/claimants claimed that the deceased was aged 32 years at the time of accident, the Tribunal taking note of the entry in Ex.P8-driving licence of the deceased and Ex.P9-school certificate, fixed the age of the deceased as 33 years. The claimants claimed that by running a textile business under the name and style of 'M/s.Hemanth Export' and also running a dyeing factory, besides dealing with land brokerage, the deceased earned Rs.1 lakh per month. Ex.P10 is a certificate of registration issued by the Commercial Tax Department, Government of Tamil Nadu, which would show that the deceased had run M/s.Hemanth Export and had been paying commercial tax regularly. Form 'B' submitted by M/s.Hemanth Export was also produced. The claimants also produced Ex.P12-audit report of M/s.Hemanth Export which would show that the company earned a net profit of Rs.2,66,444/- during the financial year 2007-08. The income tax assessment of the deceased has also been marked as Ex.P3 which would show that the deceased was the sole proprietor of the properties of M/s.Hemanth Export.

6.Perusal of record shows that PW1-father of the deceased has deposed that after the death of his son/Periyasamy, he could not run the business as he is aged and unable to maintain the company.

The Tribunal after considering the above documentary evidence and the oral testimony of PW1, found that the deceased at least would have contributed Rs.1 lakh per annum for the welfare of the claimants out of the profit earned by him. It has further held that even after the death of the deceased, the business could be run by posting any other competent person, for which, the father of the deceased should have atleast paid minimum salary of Rs.1,00,000/- per annum. Therefore, by fixing the loss of income at Rs.1,00,000/- per annum and applying 16 multiplier according to the age of the deceased, the Tribunal has awarded Rs.16,00,000/- towards loss of income due to the death of Periyasamy. Apart from the above, the Tribunal has awarded Rs.50,000/- towards loss of love and affection to the 1st respondent/minor claimant and Rs.15,000/- each towards loss of love and affection to the respondents 2 and 3/parents. A sum of Rs.10,000/- each has also been awarded for funeral expenses and loss of estate. Altogether, the Tribunal awarded compensation of Rs.17 lakhs with 7.5% interest from the date of petition till the date of deposit.

7.Though the learned counsel for the appellant relying on the evidence of PW1-father of the deceased during cross examination, wherein, PW1 has stated that M/s.Hemanth Export was closed, has contended that the Tribunal ought not to have fixed the annual loss of income at Rs.1,00,000/-, this Court is not inclined to accept the same, for the reason that it is the deposition of PW1 himself during cross examination that certificate relating to closure of M/s.Hemanth Export was not obtained from Income-tax Department and Commercial-tax Department and therefore, it has to be presumed that the company is in existence and ample evidence has been produced through Ex.P12-audit report of M/s.Hemanth Export which proves that the company earned a net profit of Rs.2,66,444/- during the financial year 2007-08. Further, the 1st respondent/minor claimant who is the son of the deceased, lost both his father and mother in the accident and he is under the custody of his grandfather and he continues to be a minor as on today. Therefore, this Court is of the considered opinion that fixation of annual loss of income at Rs.1,00,000/- and the consequential computation of loss of income due to the death of the deceased at Rs.16,00,000/- cannot be said to be excessive or arbitrary. Considering the plight of the 1st respondent/minor child who has been under the custody of aged grandparents who have also lost their only son and looking after the minor child without any support, this Court is not inclined to interfere with the quantum of compensation.

8.The appellant is directed to deposit the entire award amount with interest as awarded by the Tribunal, less the amount already deposited, if any, to the credit of claim petition within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the respondents 2 and 3 are permitted to withdraw their respective shares with proportionate interest without filing formal petition before the Tribunal. Since the 1st respondent/claimant continues to be a minor, his share with interest shall be deposited in a Nationalised Bank in Fixed Deposit till he attains majority. Till such time, the interest accruing on such deposit is permitted to be withdrawn by the 3rd respondent/father of the deceased once in three months directly from the bank.

Accordingly, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar (CS-II)

To

The District Judge,
Motor Accident Claims Tribunal,
Karur.

Copy To:-

The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

\+ 1 CC TO Mr.S.SRINIVASA RAGHAVAN, ADVOCATE IN SR No. 75162
\+ 1 CC TO Mr.S.GOKULRAJ, ADVOCATE IN SR No. 75038
\+ 1 CC TO Mr.J.S.MURALI, ADVOCATE IN SR No. 75126

BALA
TE/RSK/SAR-2 : 04/10/2018 : 4P/7C

CMA(MD)No.1380 of 2016
25.07.2018