



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 21.06.2018
CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

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C.M.A(MD).No.200 of 2018

The Divisional Manager,
M/s. Oriental Insurance Company Ltd.,
Office at Bhuvaneswari Pandian Complex,
No.127/8, Madurai Road,
Virudhunagar - 626 001.

... Appellant/Respondent No.2

Vs.

1.T.Kamaraj
2.K.Vairamani
3.Minor K.Usha
4.Minor K.Dinesh Kumar

..... Respondents 1 to 4/
Petitioners 1 to 4

5.Vishnupriya

..... Respondent 5/
Respondent 1

[Minor respondents 3 & 4 are represented
through their mother cum natural guardian,
the second respondent herein]
[R.5 given up]

PRAYER:- Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree passed in M.C.O.P.No.94 of 2014 dated 09.09.2016 on the file of the Motor Accidents Claims Tribunal cum Subordinate Judge, Virudhunagar.

For Appellant : Mr.C.Jawahar Ravindran

For Respondents : Mr.D.Sakkaravarthy
for R.1 & R.2

JUDGMENT

Assailing over the judgment and decree passed by the Motor Accidents Claims Tribunal, (Sub Court), Virudhunagar, in M.C.O.P.No.94 of 2014 dated 09.09.2016, the present civil miscellaneous appeal has been filed.

2. Heard the learned Counsel appearing on either side and perused the records carefully.

3. It is a case of fatal and the appellant/insurance company, aggrieved over the compensation of Rs.14,21,000/- awarded by the Tribunal, is before this Court on quantum only.



4. During the course of arguments, the learned Counsel for the appellant/insurance company would submit that the Tribunal has awarded a sum of Rs.12,96,000/- towards loss of earnings; Rs.25,000/- towards funeral expenses and Rs.1,00,000/- towards loss of love and affection, totalling a sum of Rs.14,21,000/- as compensation. Out of these three heads, they are disputing the compensation towards loss of earnings and not others.

5. According to the appellant/Insurance Company, the deceased was a Bachelor and therefore, the Tribunal, while calculating the loss of earnings, ought to have deducted 1/2 (ie.,50%) towards personal expenses, instead of 1/3. The learned Counsel would further draw the attention of this Court to the latest verdict of the Hon'ble Supreme Court in National Insurance Company Ltd., v. Pranay Sethi and others, decided on 31.10.2017, and would further submit that the Tribunal ought to have awarded 40% towards future prospectus, instead of 50%.

6. Perusal of record shows that the deceased was 19 years old at the time of accident and was working as a Mechanic, earning about Rs.9,000/- per month. However, no evidences were adduced to substantiate the same. In the absence of any materials to that effect, the Tribunal has fixed the notional income of the deceased at Rs.6,000/-, which is very much reasonable and also as per the latest decisions of the Hon'ble Supreme Court. Therefore, the same does not warrant interference.

7. But, admittedly, the deceased was a Bachelor and therefore, as per the settled principles of law, deduction towards personal expenses should be 50%. Insofar as future prospects is concerned, the Tribunal has fixed it at 50%, however, as per the decision of the Hon'ble Supreme Court in the case of Pranay Sethi (cited supra), future prospects for self employed persons below the age group of 40 years would be 40%.

8. Therefore, the loss of earnings arrived at by the Tribunal deserves interference at the hands of this Court and the same reads as under:

- ((Income of the deceased + future prospects) - personal expenses) is ((Rs.6,000/- + Rs.2,400/- (40%)) - Rs.4,200/- (50%)) amounts to Rs.4,200/-.
- By applying the multiplier method, it would be (Rs.4,200/- * 12 * 18) amounting to Rs.9,07,200/-.
- Therefore, the loss of earnings is reduced and the same is fixed at Rs.9,07,200/-, instead of Rs.12,96,000/-.

9. Since the other two heads, viz., funeral expenses and loss of love and affection, are not disputed by the appellant/Insurance Company, the same stands confirmed.



10. In result, this civil miscellaneous appeal is partly allowed and

- the compensation awarded by the Tribunal is reduced and fixed at Rs.10,32,200/- [Rupees Ten Lakh Thirty Two Thousand and Two Hundred only];

- The appellant/insurance company is directed to deposit the entire compensation amount awarded by this Court with interest at the rate of 7.5%, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order;
- On such deposit being made, the major claimants are permitted to withdraw their respective share with accrued interests and costs, as apportioned by the Tribunal, without filing any formal application before the Tribunal; and
- The Tribunal is directed to deposit the shares of the minor children in any one of the nationalized banks until they attain majority. The second respondent herein, who is the mother/guardian, is permitted to withdraw the interest amount once in three months.
- If the entire compensation, awarded by the Tribunal, has already been deposited, then the appellant/insurance company is at liberty to withdraw the excess amount, if any.
- There shall be no order as to costs.

Sd/-

Assistant Registrar (AD-II)

/True Copy/

Sub Assistant Registrar

To

1) The Subordinate Judge,
Motor Accident Claims Tribunal,
Virudhunagar.

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

+1CC to Mr.D.Sakkaravarthy , Advocate, SR.No.69168

+1CC to Mr.C.Jawahar Ravindran, Advocate, SR.No.69094

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