BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.07.2018

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD).No.527 of 2018

1.C.Veerama Kali @ Veerammal

2.C.Ravi Kumar

3.C.Vanniyaraj ... Appellants / claimants

Vs.

1.D.King Nickson

2.The Claims Manager,
Cholamandalam MS General,
Insurance Company Limited,
Tear House, IInd Floor,
NSC Bose Road,
Chennai - 600 001. ... Respondents / Respondents

PRAYER:- Appeal filed under Section 173 of the Motor Vehicles Act, against the award, dated 01.02.2017, made in M.C.O.P.No.208 of 2013 on the file of Motor Accident Claims Tribunal / Principal District Court, Virudhunagar District at Srivilliputhur.

For appellant : Mr.M.Jothibasu

For 1st respondent : Mr.C.Dhanaseelan

For 2nd respondent : Mr.S.Srinivasaraghavan

JUDGMENT

Heard the learned counsel appearing for the appellants / claimants and the learned counsel appearing for the respondents.

2. It is a case of fatal. The manner of the accident is not in dispute. The Tribunal has awarded a sum of Rs.5,75,000/- as compensation. This appeal has been filed by the appellants / claimants seeking to enhance the quantum of compensation awarded by the Tribunal.

3. The learned counsel appearing for the appellants / claimants would submit that though the deceased was earning a sum of Rs.10,000/- p.m. by running a grocery shop, the Tribunal has taken only Rs.4,500/- as the monthly notional income of the deceased and it is on the lower side. By relying upon the decision of the Hon'ble Supreme Court in Syed Sadiq and others Vs. Divisional Manager, United India Insurance Company Limited, reported in 2014

ACJ 627, the learned counsel for the appellants / claimants requested this Court to fix a sum of Rs.6,500/- p.m. as the notional income of the deceased. He would further submit that the future prospects also has not been added in the monthly income of the deceased by the Tribunal. He would further submit that though the Tribunal has taken into account Ex.P3 - School Transfer Certificate of the deceased for fixing the age of the deceased, it has erroneously calculated the age of the deceased as 32 instead of 28 years and the Tribunal has erroneously adopted multiplier No.13, based on the age of the mother of the deceased and as per the age of the deceased, multiplier No.17 ought to have been adopted by the Tribunal. Thus, he prayed to enhance the award amount by fixing the notional income of the deceased as Rs.6,500/- p.m., adding future prospects 40% in the monthly income of the deceased and adopting multiplier No.17.

4. The learned counsel appearing for the second respondent / Insurance Company would submit that since the claimants have not produced any document in order to substantiate their claim that the deceased was earning a sum of Rs.10,000/-, the Tribunal has fixed Rs.4,500/- p.m. as the notional income of the deceased and therefore, the same may be confirmed and the award passed by the Tribunal need not be interfered with.

5. The accident is of the year 2013. According to the claimants, the deceased was earning a sum of Rs.10,000/- p.m. In the decision of Syed Sadiq, cited supra, the Hon'ble Supreme Court, keeping in mind the price rise of agricultural products, has fixed a sum of Rs.6,500/- as notional monthly income of a vegetable vendor, even in the absence of documentary evidence to prove the income. When this is the settled legal position, Rs.4,500/- p.m. fixed by the Tribunal is on the lower side. Considering the facts and circumstances of this case and also considering the age of the deceased, year of the accident, avocation of the deceased and number of claimants, this Court is inclined to fix Rs.6,500/- as the notional monthly income of the deceased. As per the decision reported in 2017 (2) TN MAC 609 (SC) (National Insurance Company Limited Vs. Pranay Sethi and others), considering the age of the deceased, if 40% of income is added as future prospects, the monthly income of the deceased comes to Rs.9,100/- (6500 + 2600 = 9100). The Tribunal, considering the number of claimants, has deducted 1/3rd amount towards personal expenses of the deceased. Admittedly, the deceased was a bachelor and the first claimant is the mother and other claimants are brother of the deceased. Hence, this Court is inclined to deduct 50% of the monthly income towards personal expenses. If 50% of the income deducted towards personal expenses, the monthly loss of income comes to Rs.4550/- (9100 - 4550 = 4550) and the annual loss of income comes to Rs.54,600/-.

6. The date of birth of the deceased, as per Ex.P3, is 10.06.1985. The date of the accident is 27.07.2013. As rightly stated by the claimants, at the time of the accident, the age of

the deceased was 28 years, but the Tribunal has erroneously calculated the age of the deceased as 32 years. As per the decision reported in 2009 (2) TN MAC 1 (SC) (Sarla Verma and others Vs. Delhi Transport Corporation and another), multiplier No.17 has to be applied as per the age of the deceased. Thus, if the annual loss of income of Rs.54,600/- is multiplied with 17, the total loss of income comes to Rs.9,28,200/- (54,600 x 17 = 9,28,200). Instead of the compensation awarded under the other heads, a sum of Rs.30,000/- added towards conventional head, as per Pranay Sethi case, cited supra. Thus, the total compensation comes to Rs.9,58,200/-.

7. In view of the above, the award is enhanced from Rs.5,75,000/- to Rs.9,58,200/-. The second respondent / Insurance company is liable to pay the entire award amount ie., Rs.9,58,200/- with interest at 7.5% p.a. from the date of petition till the date of deposit. The 2nd respondent / Insurance Company is directed to deposit the entire award amount, less the amount already deposited, with accrued interest and costs, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit being made, the claimants are permitted to withdraw the entire amount now awarded with accrued interest and costs, as apportioned by the Tribunal, by filing a petition before the Tribunal. The claimants are directed to pay the Court fee, if any to be paid for the enhanced amount, within a period of four weeks from the date of receipt of a copy of this judgment.

8. This Civil Miscellaneous Appeal is accordingly allowed. No costs.

Sd/
Assistant Registrar(CO)

/True copy/

Sub Assistant Registrar(CS-I)

To
1.The Principal District Judge,
Motor Accident Claims Tribunal,
Srivilliputhur,
Virudhunagar District.
2.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.(2 COPIES)
+1cc to Mr.C.Dhanaseelan, Advocate, SR.No. 73895
+1cc to Mr.S.Srinivasaraghavan, Advocate, SR.No. 74016
+1cc to M/s.G.M.LAW OFFICE, Advocate, SR.No.73894

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