IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.06.2019

CORAM:

THE HON'BLE MR. JUSTICE R.MAHADEVAN

Civil Miscellaneous Appeal No.3096 of 2005
and C.M.P.No.16103 of 2005

United India Insurance Co. Ltd.,
CG Complex, 3rd Floor, 139 Kumaran Road,
Tiruppur 641 601 ... Appellant/3rd Respondent

..Vs..

1. Thayammal ...Respondent/Petitioner
2. K.Sivan
3. M.Rasappan
(R-2 & R-3 exparte before the Tribunal)
... Respondents/Respondents 1 & 2

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree, dated 27.04.2004, made in M.C.O.P.No.1394 of 2002 on the file of the Motor Accident Claims Tribunal, Additional District Court & V Fast Track Court, Coimbatore at Tiruppur.

For Appellant : Mr. N.Vijayaraghavan

JUDGMENT

The deceased Murugesan, aged 36, Hotel Master, earning a sum of Rs.5,000/- per month, died in an accident, on 21.07.2002.

2. The sole Legal Representative of the deceased Murugesan, who is the claimant / first respondent herein, (mother), has filed the claim petition, for compensation, claiming a sum of Rs.5,00,000/-.

3. As against the claim made for a sum of Rs.5,00,000/-, the Tribunal has passed an award for a sum of Rs.7,80,000/-, as per the breakup details:-

Loss of income (Rs.6,000/- x 12 x 16 x 2/3)		Rs.7,68,000.00
Loss of love and affection	-	Rs. 10,000.00
Funeral expenses	-	Rs. 2,000.00
		Rs.7,80,000.00

4. The quantum of compensation is under challenge by the appellant / Insurance Company.

5. The main contention raised by the learned counsel for the appellant is that the monthly income fixed by the Tribunal at Rs.6,000/- is excessive, when the deceased had been employed in an unorganized sector.

6. To appreciate the said contention, it is necessary to look into the break-up details of the award passed, which is detailed in paragraph 3, supra.

7. The Tribunal has passed a sum of Rs.2,000/- towards cremation expenses.

7.1. In the case of Rajesh v. Rajbir Singh and others, 2009 (2) TN MAC 36 (SC) : CDJ (2013) SC 485, there is an observation that the funeral expenses include not only the fee paid for crematorium or cementary, but also the religious practices and conventions performed on the death in the family. Hence, the said sum on the head of funeral expenses is perfectly justified.

8. So far as the loss of love and affection is concerned, a sum of Rs.10,000/- is granted, which is convention. Hence, the same has to be confirmed and it is confirmed accordingly.

9. The main contention of the learned counsel for the appellant / Insurance Company is only with regard to the loss of income awarded to the family of the deceased.

9.1. The Tribunal, deriving support from the decision of the Rajesh's case, supra, the decision of this Court in the case of K.Subramaniam and another v. Bhuvaneswari and two others in CMA No.844 of 1996, dated 07.06.2001, the decisions reported in 1992 TNLJ 116 and ACJ 1989 1074 and by relying upon Ex.A-8 and oral evidence adduced by P.W.1, has fixed the monthly income of the deceased at Rs.5,000/- and adding 20% towards future prospective increase in income arrived the monthly income at Rs.6,000/-. Also, the Tribunal had taken the age of the deceased as 36, adopted the multiplier of 16 and after deducting 1/3rd towards the monthly expenses of the deceased, arrived at Rs.7,68,000/- as loss of income.

9.2. At this juncture, it is relevant to point out that, for arriving at such a sum under the head of loss of income, the Tribunal has relied upon ten decisions of the Supreme Court and this Court, on the issue, which are either overruled or modified even now. It is relevant to point out that when the deceased had been able to support and provide sustenance to the family consisting of two members, the logical inference is that the deceased might have been earning more than Rs.5,000/-. The addition of 20% towards future prospective increase in income is also supported by the decision of the Apex Court. Therefore, the loss of income fixed, in this case, cannot be said to be excessive.

10. The learned counsel for the appellant / Insurance Company contended that when the deceased was a bachelor, the Tribunal should have made deductions at 50% towards the personal and living expenses, but the Tribunal committed mistake in deducting only 1/3rd towards the personal expenses.

10.1. The said contention may hold good under normal circumstances, but not in the facts and circumstances of this case. Generally, 50% deduction is done in the case of death of a bachelor towards personal and living expenses. The fact remains that the dependent mother is a widow, depending wholly upon the income of the deceased. The widowed mother has specifically stated that her son used to spend all the amount towards the welfare of the family. In the absence of the father, the total and complete liability to maintain the mother lies upon the deceased. Under such circumstances, the deceased is not expected to spend 50% of the income towards personal and living expenses.

10.2. In the given set of circumstance, the Tribunal has chosen to deduct 1/3rd towards the personal and living expenses, which in the considered view of this Court, is perfectly valid.

11. Finally, it is to be pointed out that it is mandatory on the part of the Court to award 'just compensation' and the amount of compensation need not be confined to amount claimed by the claimants, as they suffer from the injuries sustained or death of the breadwinner, apart from illiteracy and ignorance. Therefore, the Tribunal is justified in awarding just compensation, in addition to what is claimed.

12. Under such circumstances, the award of compensation passed by the Claims Tribunal is reasonable, just, fair and does not require any interference by this Court. Thus, the Civil Miscellaneous Appeal is dismissed.

13. Despite the interim order, dated 18.10.2005, passed by this Court, the appellant / Insurance Company has not deposited the amount yet. Considering the fact that the first respondent herein / claimant is a widow and the case is pending for a long time and despite the interim order not being complied with by the appellant, this Court expects that the Insurance Company / appellant herein would deposit the amount of compensation, as awarded by the Tribunal, along with interests and costs, less the amount already deposited, if any, within a period of four

weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the amount to the Savings Bank Account of the the claimant / first respondent herein, through RTGS.

Sd/-
Assistant Registrar(CS-IV)

//True copy//

Sub Assistant Registrar

srk

To

1. Motor Accident Claims Tribunal,
Additional District Court &
V Fast Track Court, Coimbatore
at Tiruppur.

2. The Section Officer,
V.R. Section, High Court,
Madras

+1cc to Mr.M.B.Gopalan, Advocate SR.No.46500

C.M.A.No.3096 of 2005
& C.M.P.No.16103 of 2005

MG(CO)
GMY(18/09/2019)