IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2019

CORAM:

THE HON'BLE MR.JUSTICE R.MAHADEVAN

CIVIL MISCELLANEOUS APPEAL NO.662 OF 2007

1. Poonam Pandey
2. Minor S.Sruthi
3. Minor S.Srushti
   (Minors are represented by their mother and next friend, Poonam Panday)
4. Bhagiamani Devi
5. Regunathacharaya .. Appellants/Claimants

..vs..

1. S.Krishnaraj
2. National Insurance Co. Ltd.,
   Mylapore Branch Extension Counter,
   Khivraj Motors Ltd., No.623 Anna Salai,
   Chennai - 6

... Respondents/Owner of the vehicle & Insurer.

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree, dated 15.12.2006 made in M.C.O.P.No.31 of 2003 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai.

For Appellants : Mr.N.Manokaran

For Respondents : Mr.D.Bhaskaran, for R-2
No Appearance, for R-1.

JUDGMENT

The claimants have filed the appeal challenging the quantum of compensation awarded at Rs.11,85,000/- as inadequate.

2. The Legal Representatives of the deceased (Srimannarayanan), namely, wife, two minor children and parents (totally five in numbers) have filed the claim petition claiming a sum of Rs.30,00,000/- as compensation.

3. The deceased Srimannarayanan, aged 30, at the time of accident, was a Sub-Inspector of Police, earning a sum of

Rs.9,182/- per month, died in an accident on 14.01.2002. The Tribunal has quantified the compensation at Rs.11,85,000/- with the following breakup details:-

Loss of income	-	Rs.11,00,000/-
Funeral expenses	-	Rs. 10,000/-
Loss of future prospects	-	Rs. 25,000/-
Love and affection	-	Rs. 50,000/-
		Rs.11,85,000/-

4. While quantifying the pecuniary benefits, the monthly income has been taken at Rs.7,500/- per month.

5. The learned counsel appearing for the appellants / claimants would submit that the monthly salary slip, Ex.A-11, has been filed to show that the deceased was earning a sum of Rs.9,182/- per month and the deceased was an Income Tax Payer and thus the monthly income taken is grossly inadequate and it should have been taken at Rs.9,182/-.

6. The learned counsel appearing for the second respondent / Insurance Company would submit that in the absence of actual income tax assessment (at the time of death) and the payment of current income tax being proved, filing of Ex.A-11 alone will not show the deceased in a higher financial pedestal and therefore, the monthly income taken by the Tribunal is perfectly justified and it cannot be raised any further.

7. The fact remains that the deceased had been maintaining a big family, consisting of five members. The dependency includes the minor children, who are to be groomed and elderly persons, whose medical care has to be attended to by the deceased. All the minor children might have been studying and the educational expenses also should have been met only by the deceased. Therefore, it is unrealistic to hold the future prospectus of the deceased at a consolidated sum of Rs.25,000/- and it should have been taken atleast 50% of the salary of the deceased. Even otherwise, when the deceased had been in a position of paying income tax during the accident period, then the logical inference is that the deceased would have been in a better financial position as he gained experience. Therefore, the income should have been taken as per Ex.P12-service register only.

8. Further, so far as the deduction on account of the personal earnings is concerned, deduction at 1/4th alone would be justified, because when there are large number of dependents nobody would be inclined to spend more money on himself towards

his/her personal and living expenses and therefore, deduction of 1/4th alone is justified.

9. Thus, taking the income at Rs.9,182/- per month and adopting 50% future prospective increase in income and applying the multiplier of '16' and deducting 1/4th towards the personal and living expenses of the deceased, the loss of income has to be quantified, which comes to Rs.22,03,776/- (Rs.9,182/- x 12 x 16 + 50% (-) Rs.1/4th). In view of the same, the amount awarded under the head of loss of future prospectus at Rs.25,000/- is unwarranted and hence, the same stands deleted.

10. So far as the sums awarded by the Tribunal under the heads of loss of love and affection and funeral expenses are concerned, the same are in consonance with the settled principles of law and hence, the sums awarded under those heads are confirmed as such.

11. Further, had the deceased been alive and receiving the salary, he would be paying income-tax at the rate of 20% on his total gross income. But, here is a case of death and no compensation has been awarded towards loss of consortium and loss to estate and if those claims are awarded, the income tax payable would get offset and therefore, there is no necessity to reduce any amount towards income tax payable by the deceased.

12. Thus, the total amount of compensation is quantified at Rs.22,63,776/-, which is payable at 7.5% interest from the date of petition till the date of deposit. The restructured breakup details of the award of compensation reads thus:-

Loss of income	-	Rs.22,03,776.00
Loss of love and affection	-	Rs. 50,000.00
Funeral expenses	-	Rs. 10,000.00
		Rs.22,63,776.00

13. At this juncture, so far as the award of interest is concerned, the learned counsel appearing for the Insurance Company/second respondent vehemently contended that the Insurance Company cannot be burdened with the liability to pay interest, for quite a long period, i.e., from 19.09.2002 till 2019.

13. True that the interest of the Insurance Company will get affected to certain extent, when the matter is taken up after a decade or two decades. But the delay that occurred is a systemic delay. Also based on Ex.P-12-Service Register, this

Court has taken the future prospective increase in income at 50%. Hence, this Court finds it appropriate to eschew/dispense with the interest payable to the claimants/appellants, as a special case.

13.1. In the result, the Appeal is allowed. No costs.

14. Hence, the Insurance Company/second respondent herein is directed to deposit the compensation amount of Rs.22,63,776/-, as ordered by this Court, in full quit, 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 and on an application being taken out for declaring minor claimants as majors, the claimants/appellants are permitted to withdraw the entire compensation, in the same proportion, as per the ratio of apportionment made by the Claims Tribunal, since it is represented that all minors have become majors. Needless to state that the claimants shall pay the necessary court fee before receiving the copy of this judgment.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

srk

To

1. Motor Accident Claims Tribunal,
IV Small Causes Court, Chennai.

Copy To
The Section Officer,
V.R.Section, Madras High Court,
Chennai 104.

+1cc to Mr.N.Manokaran, Advocate, S.R.No.51442
+1cc to Mr.D.Bhaskaran, Advocate, S.R.No.52088

C.M.A.No.662 of 2007

GJ(CO)
CS/06/10/2020
CS/08/10/2020