IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2019

CORAM

THE HON'BLE MR.JUSTICE M.M.SUNDRESH
AND
THE HON'BLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A.NO.2180 OF 2016
AND
C.M.P.NO.15652 OF 2016

United India Insurance Co. Ltd.,
No.134, Greams Road,
Selling Building, 4th Floor,
Chennai - 6. ...Appellant/2nd Respondent

Vs.

1.Harish @ Harish Ananthanarayanan
... 1st Respondent/Petitioner

2.A.Sarathi ...2nd Respondents/Respondent

PRAYER:
Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the judgment and decree dated 25.04.2016 made in M.C.O.P.No.4209 of 2012 on the file of the Motor Accidents Claims Tribunal(In the II Court of Small Causes), Chennai.

For Appellant : Mr.D.Bhaskaran
For Respondents : Mr.P.Shanmugasundaram for R1

JUDGMENT

Judgement of the Court was delivered by Krishnan Ramasamy,J.

This Appeal has been preferred as against the quantum of award passed in MCOP No.4209/2012 on the file of Motor Accidents Claims Tribunal, Chennai.

2.The claimant filed a petition seeking a compensation for a sum of Rs.74,40,000/-. Whereas the tribunal after considering the submissions of both side awarded a sum of Rs.73,79,000/- as compensation for the claimant.

3. The brief facts of the case are as follows:-
On 10.08.2012, at about 7.15 pm, the Bajaj CT 100

motorcycle bearing registration No.TN 57 H 6379 came from west to east direction in a rash and negligent manner and endangering to the public safety and dashed against the deceased. As a result, the deceased-Savita fell down and also sustained fatal injuries.

4. The tribunal after hearing both sides came to the conclusion that the accident occurred due to the negligent driving on the part of the rider of the motorcycle. Now challenge before this Court is not against the negligence and liability fixed by the tribunal but only on the quantum of award passed by the tribunal.

5. The learned counsel for the appellant fairly contend that at the time of accident, the deceased was 32 years old and she had passed ACS final examination. The accident was occurred on 10.08.2012. At the time of accident, the deceased was working as Senior Executive, Secretariat. However, he would contend that though she was working as a Senior Executive, Secretariat, the receipt of the salary shows that her salary was Rs.38,000/- per month in the year 2012, which is doubtful. The learned counsel referred the bank statement for receipt of the salary by the deceased, which was marked as Ex.P12. He contend that as per last drawn salary in the month of May 2012, she was drawing a sum of Rs.32,289/-. Therefore, he filed a calculation memo by taking salary as Rs.32,289/-.

6. In the calculation memo, the appellant fairly added 50% towards the future prospects, he has stated that the gross monthly salary after adding 50% would be Rs.48,434/- and therefore, annual income would be Rs.48,434/-X12=Rs.5,81,208/-. From the said amount, after the standard deduction of Rs.1,90,000/-, the income tax works out a sum of Rs.47,242/-. The said amount is required to be deducted from the Annual Income of Rs.5,81,208/-. After deducting the said income tax, the annual income would be Rs.5,33,966/- (Rs.5,81,208/- - Rs.47,242/-). He would further contend that in the present case only one claimant, subsequent to the death of the deceased wife, the claimant got re-married and he is running the marital life peacefully. Further he would contend that the claimant is not depend upon the income of the deceased and he was working independently in a private concern. Therefore, 50% required to be deducted towards the personal expenses of the deceased. Since, there was no dependency for the deceased and after deducting 50% by applying multiplier 16 for the age group of 32, the loss of income would be Rs.42,71,728/-.

7. He would further contend that for love and affection the tribunal has awarded a sum of Rs.1,00,000/- and a sum of Rs.1,00,000/- was awarded separately towards the consortium.

When the Court intended to award consortium for the widowed husband, there is no necessity to order separate amount towards love and affection for the same widowed husband. Therefore, even as per the settlement proposition of law laid down by Hon'ble Apex Court reported in National Insurance Company Limited V.Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC), the claimant is entitled only Rs.40,000/- towards consortium. Therefore, he filed the calculation memo for showing consortium and as well as love and affection a sum of Rs.40,000/- and loss of estate Rs.15,000/- and Funeral Expenses Rs.15,000/-. By ignoring the settled proposition of law, the tribunal has awarded a sum of Rs.50,000/- towards loss of estate and Rs.25,000/- towards funeral expenses. Therefore, he filed a memo stating that the appellant/Insurance Company is agreed to pay a sum of Rs.43,41,728/- rounded off to Rs.43,50,000/-.

8. The learned counsel appearing for the respondent/ claimant initially opposed for the calculation memo filed by the appellant/Insurance Company. However, subsequently, he has agreed for the said amount. This Court is also of the view that the memo was filed based on the last drawn salary by adding 50% towards future prospects and after deducting the income tax, which appears to be just and fair. In the present case, only one claimant that too he is the husband of the deceased, the said claimant also got re-married, he has only lost his ex-wife and presently he got re-married and happily running the marital life. Therefore, we are also of the view that it would be appropriate to deduct 50% towards the personal expenses of the deceased. With regard to the loss of love and affection and consortium the tribunal awarded Rs.1 lakh towards loss of consortium and Rs.1 lakh towards loss of love and affection. The tribunal either can award compensation for the widowed husband loss of consortium or loss of love and affection, as per the the Hon'ble Supreme Court's settled proposition of law and therefore, this Court is inclined to award only for the loss of consortium to the spouse. Accordingly, Rs.40,000/- awarded towards the consortium, and a sum of Rs.1,00,000/- awarded towards consortium and Rs.1,00,000/- awarded towards love and affection by the tribunal is set aside. The tribunal awarded loss of estate Rs.50,000/- and funeral expenses Rs.25,000/-, it is not in accordance with the settled proposition of law by the Hon'ble Apex Court reported in National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC). In terms of the above decision of Hon'ble Apex Court, this Court can award maximum a sum of Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses. Accordingly, this Court is inclined to award a sum of Rs.15,000/- towards loss of estate and Rs.15,000/- funeral expenses as stated in the memo. Therefore, we are of the considered view that the calculation memo filed by the appellant

appears to be just and fair and accordingly, we reduced the compensation awarded by the tribunal from Rs.73,79,000/- to Rs.43,50,000/- in the manner stated below.

Loss of Income	Rs.42,71,728/-
Consortium	Rs. 40,000/-
Loss of Estate	Rs. 15,000/-
Funeral Expenses	Rs. 15,000/-
Total	Rs.43,41,728/-
Rounded off to	Rs.43,50,000/-

9. We direct the Insurance Company to deposit the entire award amount along with 7.5% interest from the date of accident till the date of deposit after deducting the amount, if any, already deposited by the appellant/Insurance Company within a period of 12 weeks from the date of receipt of a copy of this order. In the event of deposit of entire award amount, we further direct the Court below to transfer the entire award amount to the claimant's bank account by way of RTGS within a period of three weeks from the date of deposit along with interest. In case, if any award amount has already been deposited, the said revised amount as ordered by this Court, to be paid to the claimant along with interest within a period of three weeks from the date of receipt of a copy of this order in the manner stated above.

10. Accordingly, this appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III-MDU)

//True Copy//

Sub Assistant Registrar

AT
To
The II Judge, Motor Accidents Claims Tribunal,
(Court of Small Causes), Chennai.

Copy To
The Section Officer, VR Section, High Court, Madras-104.

+1cc to Mr.P.Shanmugasundaram, Advocate, S.R.No.105156
+1cc to Mr.D.Bhaskaran, Advocate, S.R.No.105359

C.M.A.No.2180 of 2016
and
C.M.P.No.15652 of 2016

MR(CO)
CS/27/07/2020