IN HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.04.2019

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
AND
THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.No.430 of 2016
and
C.M.P.No.3172 of 2016

The Divisional Officer,
The New India Assurance Company Ltd,
Arcot Woodlands Building,
No.1, Bharathi Road,
Cuddalore. ... Appellant

vs.

1.Anandayee

2.Saravanan (Minor)

3.Murugavel (Minor)

4.Karthika (Minor)

Kalyani (died)
(2 to 4 are minors rep.by their mother and natural guardian Anandayee)
5.Sumathi

(5th Respondent exparte in lower court) ... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988, against the award and decree dated 31.03.2015 passed in M.C.O.P.No.393 of 2010 on the file of the Motor Accident Claims Tribunal, Virudhachalam, (Principal Subordinate Judge, Virudhachalam).

For Appellant : Mr.R.Sivakumar

For Respondents : Mr.L.Munisamy for R1 to R4
R5- Exparte in lower Court

J U D G M E N T

(Judgment of the Court was delivered by C.SARAVANAN,J.)

The appellant is the insurance company and is aggrieved by the impugned fair and decreetal order dated 31.03.2015 passed by the Subordinate Judge, Motor Accident Claims Tribunal, Virudhachalam in M.C.O.P.No.393 of 2010.

2.By the impugned order the Tribunal has awarded a sum of Rs.42,72,368/- to the respondents No.1 to 4. They were the claimants before the Tribunal. They are the wife and three minor children.

3.The 5th claimant is the mother of the deceased Panchanathan who has since deceased. The 5th respondent was the 1st respondent before the Tribunal who remained exparte both before the Tribunal and before this Court.

4.The deceased Panchanathan is said to have died in an accident involving a Two Wheeler bearing Registration No.TN-31-AV-6147 driven by him when he was hit by Tata ACE van bearing Registration No.TN-31-AV-9689 Registered in the name of 5th respondent and insured with the appellant insurance company.

5.The Tribunal has awarded a sum of Rs.42,72,368/- as compensation with interest at the rate of 7.5% per annum, under the following heads:

Sr.No	Heads and calculation	Amount awarded by this Court
1	i) Gross income of the deceased per month Rs.19,270 ii) 50% added towards future prospects (Rs.19,270 x 50 %) + Rs. 9,635 ------------- Rs.28,905 iii) Deducting ¼ towards personal expenses of the deceased (Rs.28,905 x 1/4) - Rs. 7,226 ------------- Rs.21,679 iv) Gross income per annum (Rs.21,679 x12) Rs.2,60,148 v) Loss of income applying multiplier of 16 (Rs.2,60,148 x 16) Rs.41,62,368	Rs.41,62,368
2	Loss of consortium	Rs. 50,000
3	Love and Affection (Rs.10,000 x 4)	Rs. 40,000
4	Funeral Expenses	Rs. 10,000
5	Transport Expenses	Rs. 10,000

Sr.No	Heads and calculation	Amount awarded by this Court
	Total	Rs.42,72,368/-

6.The deceased was aged 34 years at the time of death and was working as a Commercial Inspector with the TamilNadu Electricity Board and was admittedly drawing a salary of Rs.19,270/- per month.

7.The appellant/ insurance company has questioned adoption of the income of Rs.19,270/- per month for the purpose of computation of the compensation payable to the contesting respondents.

8.It is stated that the salary certificate marked as Ex.P9 was only a xerox copy and not the original salary certificate and therefore it is stated that it was not proper to place reliance on the said certificate to award the compensation of Rs.42,72,368 to the contesting respondents/claimants.

9.In this connection reliance was placed on the decision of the Hon'ble Supreme Court reported in Narbada Devi Gupta vs Birendra Kumar Jaiswal and Another in 2003 (8) SCC 745.

10.It is further submitted that the Tribunal ought to have in any event deducted 30% towards the income tax and therefore on this account also the Tribunal erred in awarding the aforesaid compensation by fixing the loss of earning of Rs.41,62,368/-.

11.The appellant/ insurance company also questioned the amount awarded towards the consortium.

12.Heard learned counsel for the appellant insurance company and the respondent-claimants. We have also examined the records of the case.

13.The proceeding before the Tribunal while dealing with accident claims under the provisions of the Motor Vehicle Act, 1988 are summary proceedings.

14.The Tribunal is not bound by strict rules of evidence. We are of the view, the reliance placed on the judgment of the Hon'ble Supreme Court in Narbada Devi Gupta vs Birendra Kumar Jaiswal and Another in 2003 (8) SCC 745 is misplaced as the said decision was not rendered in the context of a summary proceedings under the provision of above Act.

15.Admittedly the deceased was a Government employee and was serving with the TamilNadu Electricity Board at the time of the death. We do not find any mistake in the order of the Tribunal while placing reliance on Ex.P9 for determination of compensation on the aforesaid income of Rs.19,270/-.

16.The other ground urged is that the Tribunal erred in awarding the future prospects at 50% of the aforesaid income. However, even this ground is not available in the light of the decision of the Hon'ble Supreme Court in National Insurance Co.Ltd vs Pranay Sethi in (2017) 16 SCC 680.

17.The only mistake which the Tribunal has committed while determining the compensation is on account of its failure deduct the income tax and while awarding lesser compensation towards loss of love and affection and while awarding Rs.10,000/- in excess towards loss of consortium. There, the amount of compensation is to be recomputed.

18.We are inclined to deduct 30% towards income tax from the gross income after excluding first Rs.2,00,000/. Consequently, the compensation to be awarded is being re-computed as follows:-

S.No	Heads and calculation	Amount awarded by this Court
1	i) Notional gross income of the deceased per month Rs. 19,270 ii) Gross income of the deceased per annum (Rs.19,270 x 12) Rs.2,31,240 iii) Net taxable income (standard deduction for Rs.2,00,000) (Rs.2,31,240 - Rs.2,00,000 = Rs. 31,240) iv) Deduction 30% tax on above taxable income (31,240 x 30%) - Rs. 9,372 -------------- v) Net income of the deceased Rs.2,21,868 vi) 50% of above to be added as future prospects + Rs.1,10,934 (Rs.2,21,868 x 50/100) * -------------- Rs.3,32,802 vii) Deduction ¼ towards Personal expenses (3,32,802 X 1/4) - Rs. 83,201 -------------- Rs.2,49,601 viii) Add 16 Multiplier (Rs.2,49,601x 16) Rs.39,93,616	Rs.39,93,616

S.No	Heads and calculation	Amount awarded by this Court
2	Loss of consortium*	Rs. 40,000
3	Love and Affection* (40,000 x 3 = 1,20,000)	Rs. 1,20,000
4	Funeral Expenses	Rs. 15,000
5	Transport Expenses	Rs. 15,000
Total		Rs.41,83,616/-

* As per Sarla Varma and Prenay Sethi 's case.

19.The impugned order is thus modified and the compensation awarded by the Tribunal is reduced to Rs.41,83,616/- from Rs.42,72,368/- and is rounded off to Rs.41,83,750 together with accrued interest thereon at 7.5%. Accordingly, the impugned order is modified with the following directions:-

i. The Appellant/Insurance Company is directed to deposit a sum of Rs.41,83,750/- together with interest at the rate of 7.5% p.a from the date of petition till the date of deposit within a period of eight weeks from the date of receipt of copy of this order after deducting and previous deposits.

ii. On such deposit, the first respondent/claimant is entitled to Rs.20,83,750/- and the three minor children are entitled to Rs.7,00,000/- each together with interest at the rate of 7.5% p.a.

iii. The first respondent/claimant is permitted to withdraw the above said amount.

iv. The respondents No.2 to 4 being the minors, their shares shall be invested in a separate interest bearing fixed deposit in a nationalised bank till they attain majority.

v. The first respondent/claimant shall be entitled to withdraw the interest from such deposit every three months to meet the expenses for the benefit of respondent Nos. 2 to 4.

20.In view of the above, the civil miscellaneous appeal is partly allowed. Consequently, connected civil miscellaneous petition is closed. No cost.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

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To

The Motor Accident Claims Tribunal,
Virudhachalam.
(Principal Sub Judge, Virudhachalam.)

C.M.A.No.430 of 2016
and
C.M.P.No.3172 of 2016

SS(CO)
GMY(27/08/2019)