IN THE 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. 477 of 2016

The Divisional Manager,
United India Insurance Co., Ltd.,
1st Floor, 73, C.M.T.H.Road,
Ambattur, Chennai - 53 ...Appellant/2nd respondent

Vs.

1.T.R.Sivasankari
2.T.R.Thulasiraman
3.T.R.Akilandeswari ..1 to 3 Respondents/ Petitioners
4.T.Rose ...4th Respondent/1st respondent

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act,1988 against the award and decree dated 28.01.2015 in M.C.O.P. No. 207 of 2012 on the file of the Motor Accidents Claims Tribunal, Subordinate Judge's court, Tiruttani.

For Appellant : Mr.S.Arun Kumar

For Respondents 1 to 3 : Mr.D.Anandan

JUDGMENT
(Delivered by M.M.Sundresh,J.)

This appeal is preferred only on the question of quantum. The deceased was aged about 54 years old. The income and the multiplier adopted by the Tribunal is not in dispute. However, the dispute is with respect to the deduction made towards the personal expenses.

2. The learned counsel appearing for the appellant would submit that the Tribunal fell into error in deducting

one-third towards the personal expenses, as the children of the deceased are majors and happily married. Therefore, as per the judgment of New India Assurance Co. Ltd v. Vinish Jain and others, reported in (2018) 3 SCC 619, 50% deduction must have been done. Insofar as towards the loss of love and affection is concerned, the Tribunal awarded Rs.90,000/-, whereas it should have been Rs.40,000/- cumulatively in tune with the judgment of the Supreme Court in National Insurance Co. Ltd v. Pranay Sethi, reported in (2017) 16 SCC 680.

3. The learned counsel appearing for the respondents/claimants submitted that inasmuch as the Tribunal awarded the total compensation amount after taking into consideration all the relevant materials available on record, no interference is required.

4. We may refer to the following paragraph from Vinish Jain(supra), which is extracted hereunder:-

> "7. We feel that 50% deduction is called for and if this factor is taken into consideration then the loss of dependency is Rs 1,82,250 and if multiplier of 5 is used, the compensation works out to Rs 9,11,250. In addition, the claimants would be entitled to Rs 70,000 for love and affection and funeral expenses, etc. as per the judgment of this Court passed in National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680. Accordingly, the amount of compensation is reduced to Rs 9,81,250 along with interest awarded by the Tribunal."

5. In view of the aforesaid pronouncement, we are of the view that the deductions made by the Tribunal towards the personal expenses cannot be sustained in the eye of law as against 50%. Admittedly, the claimants are major children and married. There is no material to show that the claimants are totally dependent on the deceased. Thus, we are of the view that 50% deduction must have been made. If that is done, the loss of income would be Rs.5,44,500/- (Rs.7,500+10%-1/2x12x11). However, the other heads awarded by the Tribunal towards loss of estate and funeral expenses are not disturbed. Accordingly, a sum of Rs.6,64,500/- is arrived at. The claimants are entitled to Rs.2,21,500/- each. In all other respects, the order passed by the Tribunal holds good. The excess amount lying to the deposit, if any, shall be withdrawn by the appellant by filing appropriate application before the Tribunal.

In view of the above, the appeal is partly allowed to the extent indicated above. No costs. Consequently, connected C.M.P. No. 3731 of 2016 is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

ssm
To:-
The Presiding Officer
MACT,
Tiruttani.

Copy to
The Section Officer,
VR Section,
High Court, Chennai.

+1cc to Mr.S.Arun kumar , Advocate SR.No. 37166
+1cc to Mr.D.Anandan , Advocate SR.No. 36880

C.M.A. No. 477 of 2016

cp
A.SK(26/11/2019)