IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 19.09.2018

Delivered on : 15.03.2019

CORAM :

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Civil Miscellaneous Appeal No. 603 of 2016

1.Palaniyammal
2. Brundhadevi
3.Selvi
4.Shanthi

5. Minor Nithin Mouriya,
(Minor Petitioner rep. by their Next Friend,
Guardian/ Mother Shanthi) ….Appellants/Petitioners

Vs-

1.Sindhu,

2.Bharti General Insurance Company Limited,
Divya Trade Centre, 1st Floor, No. 11, Brindhavan Road,
Fair Land, Salem-636 016. ... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award dated 28.07.2015 made in M.C.O.P.No. 575/2013 on the file of MACT/Principal District Court at Namakkal, and enhance the award amount.

For Appellant : Mr.C.Paraneedharan

For Respondents : Mr.Srinivasan Ramalingam (for R2)

R1 - Exparte

JUDGEMENT

Aggrieved by the award dated 28.07.2015 passed by the Tribunal in M.C.O.P. No. 575 of 2013, the appellants/claimants have preferred this Civil Miscellaneous Appeal.

2.It is the case of fatal accident for death one Muthusamy, aged 70 years, who was self employee/rice merchant and earned Rs. 10,000/-pm, the dependants are filed claim petition seeking compensation of 10-lakhs for accident happened on 06.10.2012 and died on same day in the hospital. Upon consideration of the oral and documentary evidence, the Tribunal held that the accident happened due to rash and negligent driving of the first respondent driver and the first Respondent is owner of vehicle, since the said vehicle was insured with the Second respondent insurance company, the Tribunal held that the respondents 1 & 2 are jointly and severally liable to pay the compensation. Based on the pleadings and evidences the learned tribunal granted compensation a sum of Rs. 1,15,000/- and the same is under challenge in the above appeal.

3.Since negligence and liability are not disputed either of parties and only Quantum of compensation arrived by the tribunal is inadequate, hence this court not traversed with regard to negligence and Liability fixed by the tribunal are confirmed.

4.The Learned Counsel for Appellants submitted that, the deceased was rice merchant and earned not less than Rs. 10,000/- PM, but the tribunal erroneously fixed Rs. 2,500/- as notional income without any basis, moreover the accident happened on 06.10.2012, even as per minimum wage act the income should be Rs. 10,000/- for the relevant period and also submits that as per rulings of Hon'ble Apex Court in Syed Sadiq case reported in 2014(1) TNMAC 459 SC, even for vegetable vendor a sum of Rs. 6,500/- fixed as notional income for the accident happen on 2008 and further pleaded that other conventional damages are not properly considered. Hence pray for enhancement of compensation.

5.Per Contra, the Learned Counsel for the insurance company vehemently contented that the Tribunal by appreciating the entire evidences and granted compensation under loss of income and other heads also reasonably awarded, hence he pray for dismissal of the appeal.

6.I have considered the submissions made by the learned counsel appearing on either side and also perused the materials available on record.

7. On appreciating the entire evidence of the appellants that the deceased was rice merchant and earned not less than Rs. 10,000/- PM, but to prove the same they failed to produce any document, but the counsel for appellants point out that as per rulings of apex court in Syed Sadiq case reported in 2014 (2) SCC 735, para-8 & 9 it held that:

"8. The appellant/claimant in his appeal further claimed that he had been earning Rs. 10,000/- p.m. by doing vegetable vending work. The High Court however, considered the loss of income at Rs. 3,500/- p.m. considering that the claimant did not produce any document to establish his loss of income. It is difficult for us to convince ourselves as to how a labour involved in an unorganized sector doing his own business is expected to produce documents to prove his monthly income. In this regard, this Court, in the case of Ramchandrappa –Vs- Manager, Royal Sundaram Alliance Company Limited, has held as under:

"13. In the instant case, it is not in dispute that the Appellant was aged about 35 years and was working as a Coolie and was earning Rs. 4,500/- per month at the time of accident. This claim is reduced by the Tribunal to a sum of Rs. 3,000/- only on the assumption that wages of the labourer during the relevant period viz. in the year 2004, was Rs. 100/- per day. This assumption in our view has no basis. Before the Tribunal, though Insurance Company was served, it did not choose to appear before the Court nor did it repudiated the claim of the claimant. Therefore, there was no reason for the Tribunal to have reduced the claim of the claimant and determined the monthly earning a sum of Rs. 3,000/- p.m. Secondly, the Appellant was working as a Coolie and therefore, we cannot expect him to produce any documentary evidence to substantiate his claim. In the absence of any other evidence contrary to the claim made by the claimant, in our view, in the facts of the present case, the Tribunal should have accepted the claim of the claimant.

14. We hasten to add that in all cases and in all circumstances, the Tribunal need not accept the claim of the claimant in the absence of supporting material. It depends on the facts of each case. In a given case, if the claim made is so exorbitant or if the claim made is contrary to ground realities, the Tribunal may not accept the claim and may proceed to determine the possible income by resorting to some guess work, which may include the ground realities prevailing at the relevant point of time. In the present case, Appellant was working as a Coolie and in and around the date of the accident, the wage of the labourer was between Rs.100/- to Rs.150/- per day or Rs. 4,500/- per month. In our view, the claim was honest and bonafide and, therefore, there was no reason for the Tribunal to have reduced the monthly earning of the Appellant from Rs. 4,500/- to Rs. 3,000/- per month. We, therefore, accept his statement that his monthly earning was Rs. 4,500/-."

9. There is no reason, in the instant case for the Tribunal and the High Court to ask for evidence of monthly income of the appellant/claimant. On the other hand, going by the present state of economy and the rising prices in agricultural products, we are inclined to believe that a vegetable vendor is reasonably capable of earning Rs. 6,500/- per month."

8.By considering the facts and circumstance of the case and considering the ruling of apex court stated supra, and date of accident this court accepted the arguments of the Counsel for appellants and fixed a sum of Rs. 8,000/- PM as a notional income of the deceased. It is relevant to point out that the age of the deceased was 70 years, hence no future prospectus added as per ruling of apex court in Pranay Sethi and relevant the multiplier is 5 and deducted 1/4 toward personal expenses. Thus the loss of income is re -worked as follows:-

Monthly income is : Rs. 8,000/-

Per Annum (Rs. 8,000 x 12) : Rs. 96,000/-
Rs. 96,000 X 5 x 1/4 : Rs. 3,60,000/-

9. The Tribunal awarded only a sum of Rs. 5,000/- toward funeral expenses and the same is enhanced to a sum of Rs. 15,000/-, towards loss of estate nothing is awarded by tribunal hence Rs. 15,000/- is awarded and towards loss of consortium is concerned nothing is awarded by tribunal hence Rs. 40,000/- is awarded, the tribunal not awarded any amount toward transportation, hence a sum of Rs. 10,000/- is awarded.

10.In so far as Loss of Love and affection in concerned the counsel for the appellants argued the tribunal totally awarded a sum of Rs. 10,000/- toward loss of love and affection totally hence prays of enhancement under this head, Considering the facts this Court granted a sum of Rs. 40,000/- each toward love and affection to the appellants- 2 & 3 and a sum of Rs. 30,000/- each to appellants- 4 & 5.

11.In the light of the above mentioned discussion, the total sum of Rs.1,15,000/- awarded by the Tribunal is enhanced to Rs. 5,80,000/- as under following heads:

Heads	Rs.
Loss of dependency	Rs. 3,60,000/-
Loss of love and affection (Appellants - 2 & 3)	Rs. 80,000/-
Loss of love and affection (Appellants-4 & 5)	Rs. 60,000/-
Loss of consortium (Appellant No.1)	Rs. 40,000/-
Funeral Expenses	Rs. 15,000/-
Loss of Estate	Rs. 15,000/-
Transportation	Rs. 10,000/-
Total	Rs. 5,80,000/-

12. In the result, the Civil Miscellaneous Appeal is partly allowed with proportionate costs. The compensation of Rs.1,15,000/- awarded by the Tribunal in M.C.O.P.No.575 of 2013 on the file of MACT/Principal District Court at Namakkal dated 28.07.2015 is enhanced to Rs.5,80,000/- with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. The 2nd respondent insurance company is directed to deposit the amount within 6 weeks from the date of receipt of copy this order, deduct if any amount already deposited. Out of the total compensation a sum of Rs.3,50,000/- to the first appellant being the wife and a sum of Rs.50,000/- each to the appellants 2 to 4 and a sum of Rs.80,000/- to the 5th appellant and the appellants 1 to 4 are concerned this court grant permission to withdraw their respective entire share with interest. In so far as of the minor amount is concerned, the direction of the Tribunal remains unaltered.

Sd/-

Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

vs

To

1.The Motor Accident Claims Tribunal,

Principal District Court, Namakkal District.

2.The Section officer

VR Section

High Court Madras

+1 cc to Mr.Srinivasan Ramalaingam Advocate sr24854

C.M.A.No. 603 of 2016

aa02/12/2019