IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.06.2019

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.2345 of 2019
and
C.M.P.No.10631 of 2018

United India Insurance Co. Ltd.,
No.24, Whites Road, Royapettah,
Chennai 600 014. ... Appellant/2nd Respondent

Vs

1.N.Rajeshwari, W/o.Nagalingam,
Old No.3/81A, New No.3/507,
North Kottagam, Keluvathur Post,
Mannarkudi Taluk, Thiruvarur District.
..1st Respondent/Petitioner

2.R.Yuvaraj, S/o.Ramalingam,
No.10A, Vengadu Central Street,
Vengadu, Sriperumbudur Taluk,
Kanchipuram District. ...2nd Respondent/1st Respondent

PRAYER : Civil Miscellaneous Appeal filed against the Award and Decree dated 23.10.2018 made in MCOP.No.5052 of 2016 on the file of Motor Accident Claims Tribunal, Spl. Sub Court No.2 (Small Causes Court, Chennai).

For Appellant :Mr.A.Dhiraviyanathan

For Respondents :Mr.N.Siva (for R1)

J U D G M E N T
(Judgment of the Court was delivered by N.KIRUBAKARAN, J)

The appeal has been preferred by the Insurance Company against the quantum of Rs.27,30,200/-, awarded as compensation for the death of one Mr.N.Balaji, aged about 34 years, Heavy Vehicle driver working in PPG Enterprises, Kancheepuram, earning about Rs.20,000/-per month, in the accident which occurred on 25.06.2016, when he was travelling as pillion rider along with one Mr.Michel Antony, from Sriperumbudur to Tambaram in a two wheeler towards Tambaram and having hit down by a water tanker lorry which was driven rash and negligently. On contest the Tribunal found that the accident occurred because of the rash and negligent driving of the driver of the lorry as proved by evidence of PW1/eyewitness and Ex.P.3 & Ex.P.4 and awarded as sum of Rs.27,30,200/-, determining the monthly income of the deceased at Rs.20,000/- per month. The such award of Rs.27,30,200/- is being challenged before this Court, only on the ground of quantum.

2.Mr.Dhiraviyanathan, learned counsel appearing f or the appellant would submit that though Rs.20,000/- was taken as monthly income, the deceased was employed only for five months and was received salary only for three months. Therefore, there is no proper proof for the monthly income of Rs.20,000/-. Hence, he seeks for reduction in the compensation.

3.A perusal of the records would show that the deceased was working as a driver as proved by Ex.P.39 to Ex.P.43 attendance reports and Ex.44 to Ex.46 salary slips of the deceased for the month of March, May & June 2016. Salary certificate has been also marked as Ex.P.48. Ex.P.51 is the photo copy of the Pan card of the deceased. When Ex.P.44 to Ex.46 salary slips and Ex.P.48 salary certificate would undoubtedly proved that the deceased was earning about Rs.20,000/-, there is no occasion for this Court either to suspect the certificates issued by the company or to reduce the amount. Therefore, Rs.20,000/- determined by the Tribunal as monthly income as per the available records especially Ex.36, Ex.44 to Ex.48 is confirmed. The Tribunal rightly took Rs.20,000/- as monthly income and added 40% towards future prospects and deducted 50% towards personal expenses and applied right multiplier of “16” as per the judgment of the Honourable Supreme Court in Sarla Verma & Others .Vs. Delhi Transport Corporation & another, reported in 2009 (2) TNMAC 1 (SC). Therefore, Rs.26,88,000/- awarded by the Tribunal towards loss of dependency is confirmed. Similarly, Rs.12,200/- awarded towards medical expenses as per Ex.P.12 to Ex.P.29 is confirmed and the amount awarded towards loss of estate and funeral expenses viz., Rs.15,000/- each are also confirmed.

4.However, there is no amount awarded by the Tribunal towards transportation and therefore, a sum of Rs.15,000/- is awarded under this head. The claimant is the mother, he lost her son and therefore, a sum of Rs.50,000/- is awarded towards love and affection, since the amount awarded towards loss of love and affection is akin to the amount awarded towards loss of consortium to the surviving spouse.

Head	Amount (Rs.)
Loss of dependency	2688000
Medical expenses	12200
Loss of estate	15000
Funearl expenses	15000
Transportation	15000
Loss of love and affection	50000
Total	2795200

5.Hence, the total compensation payable in this case is Rs.27,95,200/- rounded off to Rs.28,00,000/-. The interest awarded by the Tribunal at the rate of 7.5% per annum is confirmed.

6.Though the Insurance company has filed the appeal, the facts and circumstances enable this Court to enhance the compensation. Accordingly, award of the Tribunal (i.e.,) Rs.27,30,200/- is enhanced to Rs.28,00,000/- (Rupees twenty eight lakhs only), invoking Order 41 Rule 33 of CPC and Section 151 of CPC and Article 227 of Constitution of India. The provisions of the Motor Vehicles Act are benevolent in nature and what is required to be awarded is just and reasonable compensation. Neither it could be inflated nor inadequate. Therefore, even in the absence of appeal/cross-appeal by the claimant, this Court has got power and jurisdiction to enhance the compensation, which has been recognised by the Honourable Supreme Court in Nagappa V. Gurdayal Singh reported in 2004 (2) TN MAC 398 (SC).

7.The Insurance company is directed to deposit the entire award amount along with interest and costs as per the modified award passed by this Court, within a period of six weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any. On such deposit being made, the Tribunal is directed to transfer the entire award amount along with interest and costs to personal bank account of the 1st respondent/claimant through RTGS within a period of two weeks thereon.

8.Since even without notice to the claimant the enhancement has been made in favour of the claimant in the appeal filed by the insurance company at the time of admission itself, there is no occasion for the claimant to note the enhancement. Therefore, copy of order is directed to be sent to the claimant at free of costs. The claimant is directed to pay the requisite court-fee, if any, within a period of two weeks from the date of receipt of a copy of this order. If the requisite court-fee is not paid by the claimant, the Tribunal is directed to deduct the requisite court fee from the compensation awarded to the claimant and thereafter, transfer the remaining award amount to the claimant's account.

9.Accordingly, this appeal is dismissed, enhancing the award of the Tribunal from Rs.27,30,000/- to Rs.28,00,000/- with interest. No costs. Consequently, connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

To
1. The Sub Judge, Subordinate Court II(Motor Accident Claims Tribunal)
Special Court II to deal with MCOP Cases,
Court of Small Causes,
Chennai 104.

2.N. Rajalakshmi
W/o Nagalingam
Old No. 3/81A, New No. 3/507
North Kottagam, Keluvathur Post
Mannarkudi Taluk, Thiruvarur District

3.The Section officer
VR Section, High Court, Madras 104.
+1 C C to Mr.A.Dhiraviyanathan, Advocate sr 49512

C.M.A.No.2345 of 2019

RJI(CO)
SP(25/07/2019)