IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2019

CORAM

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

C.M.A. No. 2131 of 2018

1. R. Bhagavath Kumari

2. Gomathi Varshini

3. Minor Harini
(Minor 3rd appellant rep. by her mother
Bhagavath Kumari)

4. Marthanda Pillai ..Appellants/Petitioners

Vs.

1. Abdul Azeez
(Since R1 remained ex parte before the Tribunal
his presence may be dispensed with)

2. The ICICI Lombard General Insurance
Company Limited,
No.142, 1st Floor, ECR Main Road,
Pondicherry -1. ..Respondents/Respondents

Prayer: Civil Miscellaneous Appeal as against the judgment and decree dated 08.02.2018 in MACT O.P. No. 128 of 2016 on the file of Motor Accidents Claims Tribunal, II Additional District Judge, Poonamallee.

For Appellants :: Mr.F. Terry Chellaraja

For Respondents:: R1- ex parte
No appearance for R2

J U D G M E N T

(Judgment of the Court was delivered by N.KIRUBAKARAN,J.)

The Civil Miscellaneous Appeal has been filed by the claimants questioning the adequacy of compensation awarded by the Tribunal to the tune of Rs. 66,51,250/- for the death of one A. Ashokan, aged 46 years, husband of the 1st appellant, father of appellants 2 and 3 and son of the 4th appellant, working as Maintenance Manager in Saveetha Engineering College, Thandalam, earning about Rs.60,000/- per month in the accident which occurred on 11.09.2015 when the deceased was hit by a motor cycle driven rashly and negligently, while he was crossing the road from South to North near Mugaliwakkam Signal at Mount – Poonamallee Road.

2. The claim petition was contested by the Insurance Company. On appreciation of evidence on record, the Tribunal found that the accident had occurred only because of the rash and negligent driving of the two-wheeler and took the monthly income as Rs.45,000/- in spite of abundant evidence available on record to show that the victim's income was Rs.60,000/- per month and arrived at Rs.66,51,250/- as compensation. The said award is under challenge before this Court.

3. The 2nd respondent Insurance Company has been served and their name is also printed in the cause list. However, no one has entered appearance. Therefore, this Court proceeds to decide the matter on merits based on the evidence on record.

4. Mr.F. Terry Chellaraja, learned counsel for the appellants would submit that the deceased was working as Maintenance Manager in Saveetha Engineering College and the same is proved by the evidence of P.W.s 1 and 3. P.W.3 is the Senior Accountant working in Saveetha Engineering College, who categorically deposed that the deceased was working as Maintenance Manager earning about Rs.60,000/- per month. Ex.P7 is the Experience Certificate, Ex.P9 is the Salary Certificate showing that the deceased was earning about Rs.60,000/- per month, Ex.P10 is the Bank Pass Book of the deceased, Ex.P19 is the Attendance Register showing the attendance of the deceased and Ex.P20 is Form 16 filed before the Income Tax Authorities. It has also been proved by Exs.P19 and P20 that the deceased was a Diploma Holder in Electronics Engineering.

5. Though the Tribunal had abundant evidence before it, in the form of documents, namely, Exs.P19, P20 and P29 as well as the oral evidence of P.W.3 to show that the deceased was earning about Rs.60,000/- unilaterally, without any discussion, reduced the monthly salary of the deceased from Rs.60,000/- to Rs.45,000/-. When the monthly income of the deceased is established as Rs.60,000/- through oral and documentary evidence, the Tribunal should have given reasons for determining the monthly income at Rs.45,000/-. But, the Tribunal contrary to the evidence on record, without any reasoning and discussion, had proceeded to fix the monthly income of the deceased as Rs.45,000/- which is not sustainable in law. Therefore, as per the evidence of P.W.3 and Exs.P9, P10, P16, P19 and P20, this Court re-determines the monthly income of the deceased at Rs.60,000/-.

6. The age of the deceased was 46 years as proved by Ex.P5, postmortem report. Therefore, the Tribunal has to add 30% towards "Future Prospects" but the Tribunal has added only 25% towards "Future Prospects". Since the deceased was working in a permanent job and he was aged 46 years, 30% is added towards "Future Prospects". Accordingly, adding 30% , the total monthly income of the deceased comes to,

Monthly Income	::	Rs.60,000/-
Add: 30% towards "Future Prospects "	::	Rs.60,000/-+ 30%(Rs.60,000/-)
	::	Rs.78,000/-

7. The size of the family is four and therefore, one-fourth has to be deducted towards "Personal Expenses" of the deceased. Deducting one-fourth, the "Monthly Contribution of the deceased to his family" would be,

Total Monthly Income	::	Rs.78,000/-
Less: 1/4th towards "Personal Expenses"	::	Rs.78,000/- (-) ¼(Rs.78,000/-)
Monthly Contribution	::	Rs.58,500/-
Annual Contribution	::	Rs.58,500/- x 12 = Rs.7,02,000/-

The right multiplier of 13 has been adopted by the Tribunal as per the age of the deceased namely, 46 years. Applying the said multiplier, "Loss of Dependency" is arrived at as hereunder:

Loss of Dependency	::	Rs.7,02,000 x 13
	::	Rs.91,26,000/-

8. The sum of Rs.40,000/- awarded towards "Loss of Consortium" and Rs.15,000/- each awarded towards "Loss of Estate" and "Funeral Expenses" is confirmed. No amount was awarded towards "Transportation Expenses". Hence, a sum of Rs.10,000/- is awarded towards "Transportation Expenses".

Likewise, a sum of Rs.1lakh is awarded towards "Loss of Love and Affection" as no amount has been awarded by the Tribunal under the said head. The total compensation payable to the appellants works out to,

Loss of Dependency	::	Rs.91,26,000/-
Loss of Consortium	::	Rs. 40,000/-
Loss of Love & Affection	::	Rs. 1,00,000/-
Loss of Estate	::	Rs. 15,000/-
Funeral Expenses	::	Rs. 15,000/-
Transportation Expenses	::	Rs. 10,000/-
Total	::	Rs.93,06,000/-

The rate of interest awarded by the Tribunal @ 7.5% per annum stands confirmed. The appellants shall pay additional court-fee, if any, on the enhanced amount 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 claimants, the Tribunal is directed to deduct the requisite court fee from the compensation amount awarded to the claimants and thereafter, transfer the remaining award amount to the respective claimants' account.

9. The Insurance Company is directed to deposit the entire amount as per the award passed by this Court, with interest and costs, after deducting the amount already deposited, if any, before the Tribunal within a period of six weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the respective shares of major claimants/appellants 1, 2 and 4, as per the ratio fixed by the Tribunal, to their Bank account through RTGS within a period of one week thereafter. The share of the 3rd appellant shall be deposited in any one of the Nationalised Banks in interest bearing Fixed Deposit till she attains majority. The 1st appellant is permitted to withdraw the interest accruing on such deposit once in three months.

10. The Civil Miscellaneous Appeal is partly allowed enhancing the award of the Tribunal from Rs.66,51,250/- to Rs.93,06,000/- with interest @ 7.5% per annum. No costs.

11. The 2nd respondent Insurance Company, which is discharging a public function has to safeguard the interest of third parties, who are victims of accidents. The role of the Insurance Company has been statutorily imposed under Sections 145 to 149 of Motor Vehicles Act, 1988. When such is the statutory obligation cast upon the Insurance Company, the 2nd respondent Insurance Company viz., ICICI Lombard General Insurance Company Limited cannot ignore the notice from this

Court and fail to appear before this Court to render assistance to decide the issue before this Court arising out of Motor Vehicles Act, 1988.

Sd/-
Assistant Registrar(Insp.cell)

//True copy//

Sub Assistant Registrar

nv

To

1. The II Additional District Juge,
   The Motor Accident Claims Tribunal,
   Poonamallee.

2. The ICICI Lombard General Insurance
   Company Limited,
   No.142, 1st Floor, ECR Main Road,
   Pondicherry -1.

Copy To : The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.R.Sreevidhya, Advocate SR.No.72825

+1cc to M/s.M.Malar, Advocate SR.No.59311

C.M.A. No. 2131 of 2018

NMI(CO)
GMY(21/10/2019)