IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.01.2019

CORAM

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

C.M.A. No. 554 of 2018

1. K. Kalaichelvi
2. K.K. Kaniskar
(minor rep. by his mother and N.F. the 1st appellant herein)
3. N. Vasantha
4. M. Nachimuthu ..Appellants/Petitioners

Vs.

1. P. Ravi
2. United India Insurance Co. Ltd.,
No. 134 & 135, Greams Road,
Thousand Lights, Chennai - 600 006.

3. P. Philomi

(Notice to 1st and 3rd respondents were ex parte before the Tribunal). ..Respondents/Respondents

Prayer: Civil Miscellaneous Appeal as against the judgment and decree dated 12.12.2017 in M.C.O.P. No. 7703 of 2013 on the file of Motor Accidents Claims Tribunal, II Judge, Small Causes Court, Chennai.

For Appellants :: Ms. Ramya V. Rao
For Respondents:: Mr.A. Dhiraviyanathan 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 preferred by the claimants aggrieved over the award of Rs.15,67,000/- passed by the Motor Accidents Claims Tribunal (II Judge, Court of Small Causes), Chennai, in M.C.O.P. No. 7703 of 2013 for the death of one Koteswaran, aged about 39 years, allegedly earning about Rs.2,22,456/- per annum, in the accident, which occurred on 25.08.2013 when he was riding his motor cycle from East to West at Erode to Sathy Road, at which point of time, a lorry, going ahead of him, suddenly stopped and took reverse without noticing the motor cycle, to enter the lorry into GV Ceramics Company to unload the tiles and dashed against the motor cycle thereby causing the accident.

2. Heard Ms. Ramya V. Rao, learned counsel for the appellants and Mr.A. Dhiraviyanathan, learned counsel for the 2nd respondent.

3. The only question to be decided is with regard to the quantum of compensation as the appeal filed by the Insurance Company questioning the negligence fixed on them in C.M.A. No. 825 of 2018 was dismissed by judgment dated 19.04.2018 thereby confirming the finding rendered by the Tribunal with regard to negligence. Therefore, there is no necessity to go into that aspect once again.

4. Ms.Ramya V. Rao, learned counsel for the appellants would submit that eventhough income tax returns Exs-P10, P11 and P12 for the assessment years 2011-2012, 2012-2013 and 2013-2014 were filed, the same were rejected stating that there was no acknowledgement for having paid the tax. Dehors the rejection of the above documents, what is to be seen is whether the deceased would have earned a sum of Rs.2,22,456/- per annum as alleged. In view of the rejection of the above documents, this Court has to consider what would have been the amount earned by the deceased even as an ordinary person. The Honourable Supreme Court, in the judgment rendered in Syed Sadiq and others V. Divisional Manager, United India Insurance Company Limited reported in 2014 ACJ 627 determined the monthly income of a vegetable vendor, who sustained injuries in the accident which occurred in the year 2008 at Rs.6500/- whereas the accident, in the instant case, had occurred in 2013. Moreover, the deceased is said to have operated a tanker lorry, which was sold subsequently after his death. Besides, the deceased was a B.A. B.Ed Degree Holder. Therefore, the monthly income including 40% future prospects would come around Rs.15,000/- per month. Therefore, this Court determines the monthly income at Rs.15,000/- per month, based on cost of living as well as the judgment of the Honourable Supreme Court in Syed Sadiq's case cited supra.

5. The size of the family of the deceased is four and therefore, one-fourth has to be deducted towards "Personal Expenses" as per the judgment of the Honourable Apex Court in Smt. Sarla Verma & Ors V. Delhi Transport Corporation and Another reported in 2009 ACJ 1298 SC. Deducting one-fourth towards " Personal Expenses", "total income" comes to,

Income :: Rs.15,000/-
Less: 1/4th towards Personal Expenses
:: Rs.15,000/- (-) ¼(Rs.15,000/-)
Total Income :: Rs.11,250/-

6. The deceased was aged about 39 years as proved by Ex-P4, postmortem certificate and Ex.P7, B.A. Degree Certificate. If 39 years is taken as the age of the deceased, the relevant multiplier would be 15 as per Sarla Verma's case. Therefore, applying the said multiplier, "Loss of Dependency" is calculated as hereunder:

Loss of Dependency :: Rs.11,250 x 12 x 15
:: Rs.20,25,000/-

7. The Tribunal awarded Rs.40,000/- towards "Loss of Consortium" in consonance with the judgment of the Constitution Bench of the Honourable Apex Court in National Insurance Company Limited V. Pranay Sethi and others reported in 2017 ACJ 2700, and the same is confirmed. So also, Rs.15,000/- awarded by the Tribunal towards "Funeral Expenses" is confirmed. No amounts were awarded towards "Loss of Estate" and "Transport Expenses". Hence, this Court grants a sum of Rs.15,000/- and Rs.10,000/- respectively under the said heads.

8. No amount was awarded towards "Loss of Love and Affection" to the minor child as well as to the parents. Therefore, a sum of Rs.1lakh is awarded to the minor, who lost his father throughout his life thereby depriving him of affection and care, which he would have got from his father. The parents of the deceased would jointly get a sum of Rs.50,000/- under the said head. Totally, a sum of Rs. 22,55,000/- is payable as compensation to the appellants/claimants. The rate of interest awarded by the Tribunal @ 9% per annum is on the higher side and the same is reduced to 7.5% per annum.

9. Out of the award amount, the wife and the minor child would be entitled to Rs.10 lakhs each and 3rd and 4th appellants would be entitled to Rs.1,30,000/- and Rs.1,25,000/- respectively. The appellants shall pay additional court-fee for the enhanced amount, if any.

10. The 2nd respondent Insurance Company is directed to deposit the entire award amount, as per the modified award passed by this Court, along with interest and costs, 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, as per the above said apportionment, within a period of one week thereafter. The share of the minor claimant shall be deposited

in any one of the Nationalised Banks in interest bearing Fixed Deposit till he attains majority. The 1st appellant is permitted to withdraw interest accruing on such deposit once in three months.

11. The Civil Miscellaneous Appeal is partly allowed enhancing the award of the Tribunal from Rs.15,67,000/- to Rs.22,55,000/- with interest @ 7.5% per annum. No costs.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

nv

To

The II nd Court of Small Causes,
Chennai.

+2cc to Mr. A.N.Viswanatha Rao, Advocate, S.R.No. 6120
+1cc to Mr. A.D.Dhiraviyanathan, Advocate, S.R.No. 6010

C.M.A. No. 554 of 2018

VSN II(CO)
GN(02/04/2019)