IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.07.2019

CORAM :

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

C.M.A.NOS.130 OF 2014 AND 3312 OF 2017

C.M.A.No.130 of 2014
1.Mrs.Hannah Angelin (Wife of deceased)
2.Master.S.Joshua (Minor son of deceased)

Aged 5 years,
rep. by mother and next friend as 1st petitioner,
6B/10, Manappan Street,
Chennai 600 085. ... Appellants/Petitioners

Vs

1. M/s.Parveen Travels Pvt. Ltd.,
115/6, Santhavellore Village,
S.V.Chatram, Sriperumbudur,
Thiruvallur, Tamil Nadu.
(The 1st respondent remained ex-parte in the lower Court and notice was dispensed with for him)

2. The New India Assurance Co. Ltd.,
Garden Apartments, First Floor,
68, Purasawalkam High Road,
Chennai 600 007.

3. Elumalai (Father of deceased)

4. Vaiduryam (Mother of deceased)
Respondents 3 & 4 are
Residing at same place,
57, First Main Road,
Ashok Avenue, Periyar Nagar,
Chennai 600 082. ... Respondents/Respondents

PRAYER :

Civil Miscellaneous Appeal filed against the Judgment and Decree made in M.A.C.T.O.P.No.164 of 2009 on the file of Motor Accident Claims Tribunal (I Chief Judge - Small Causes Court) Chennai dated 28.03.2013.

For Appellant :Mr.A.S.Bilal

For Respondents :Mr.Chandrasekara Bharathy (for R2)

Mr.S.Parthasarathy (for R3 & R4)

C.M.A.No.3312 of 2017

1.Elumalai
S/o.Murugan

2.Vaiduriyam
W/o.Elumalai

Both are residing
at No.57, 1st Main Road, Ashok Avenue,
Periyar Nagar,
Chennai 600 082. ... Appellants/Respondents 3 & 4

Vs

1.Mrs.Hannah Angelin,
W/o.Suresh Sundar

2.S.Joshua (Minor)
S/o.Suresh Sundar
Rep.by mother and next friend
Mrs.Hannah Angelin,

Both are residing at No.68/10,
Mannappan Street, Chennai 600 085.

3.M/s.Parveen Travels Pvt. Ltd.,
115/6, Santha Vellore Village,
S.V.Chatram, Sriperumpudur,
Tiruvallur, Tamil Nadu.

4.The New India Assurance Co. Ltd.,
Garden Apartments, First Floor,
No.68, Purasawalkam High Road,
Chennai 600 007. ... Respondents/Petitioners/
Respondents 1 & 2

PRAYER :

Civil Miscellaneous Appeal filed against the fair and decreetal order passed in M.C.O.P.No.164 of 2009 dated 28.03.2013 passed by (Motor Accident Claims Tribunal, Chennai) (In the Chief Small Causes Court, Chennai).

For Appellant :Mr.Parthasarathy

For Respondents :Mr.A.S.Bilal (for R1 & R2)
Mr.Chandrasekara Bharathy (for R4)

COMMON JUDGMENT

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

C.M.A.No.130 of 2014 has been filed by the wife and minor child of the deceased and C.M.A.No.3312 of 2017 has been filed by the parents of the deceased.

2.The appeals have been preferred by the respective appellants aggrieved over the award passed by the Tribunal in M.C.O.P.No.164 of 2009, for the death of one Mr.Suresh Sundar, aged about 30 years, an Assistant Consultant (Grade C3A) in TCS Co. Ltd., allegedly earning a sum of Rs.84,279/- in the accident occurred on 16.04.2008, when he was driving his two wheeler near Siruseri which was hit down by the bus belonging to M/s.Parveen Travels Pvt. Ltd., and insured with New India Assurance Company Limited.

3.Heard Mr.A.S.Bilal, learned counsel appearing on behalf of the wife and the child of the deceased, Mr.S.Parthasarathy, learned counsel appearing on behalf of the parents of the deceased and Mr.Chandrasekara Bharathy, learned counsel appearing on behalf of the Insurance Company.

4.The only question to be decided in this case is with regard to adequacy of compensation awarded by the Tribunal. There is no appeal filed by the Insurance Company against the finding of the Tribunal regarding negligence that the accident occurred because of the rash and negligent driving of the bus. Therefore, the negligence aspect has attained its finality.

5.The deceased was working as an Assistant Consultant (Grade C3A) in TCS Co. Ltd., Siruseri, at the time of accident, as per the evidence of PW3 and PW4 who are respectively Assistant General Manager and Assistant Manager of Tata Consultancy. Apart from Ex.P.8/letter of appointment issued by TCS, Ex.P.9/Pay slip of the deceased for the months of January and February with earning statement for the financial year 2007-2008, Ex.P.10/Pay slip of the deceased for the months of March and April 2008 were also marked before the Tribunal to prove the income of the deceased. The claim of the appellants was that the monthly salary earned by the deceased was Rs.84,279/-. However, the Tribunal had taken the gross salary at Rs.73,446.53 per month. Therefore, the appellants sought for re-determination of the monthly income at Rs.84,279/-. However the learned counsel appearing for the Insurance Company would seek to reduce the same. The Tribunal after determining the monthly income of Rs.73,446.53/- deducted a sum of Rs.4,209/- which was given to the deceased towards conveyance allowance, personal allowance and Vehicle maintenance allowance and fixed a sum of Rs.69,237/- as monthly income of the deceased.

6.Though Mr.Chandrasekara Bharathy, learned counsel appearing for the Insurance Company relied upon the Two Judges Bench judgment of the Supreme Court in National Insurance Company Ltd., Vs. Indira Srivastava & others reported in 2008 (1) TNMAC 166 (SC) to contend that reimbursement towards medical allowance are to be deducted, the learned counsel appearing on behalf of the appellants relied upon the Three Judges Bench judgment of the Supreme Court in Manasvi Jain Vs. Delhi Transport Corporation passed in Civil Appeal No.7642 of 2009 on 23.04.2014, where the Honourable Supreme Court held that the deduction towards income tax/surcharge alone should be considered to arrive at the net income of the deceased. Paragraph 12 of the said judgment is usefully extracted as follows:

> "12.This Court in Shyamawati Sharma & Ors. Vs. Karam Singh & Ors. (2010) 12 SCC 378, while considering the issues of deduction of taxes, contributions etc., for arriving at the figure of net monthly income, held that while ascertaining the income of the deceased, any deductions shown in the salary certificate as deductions towards GPF, life insurance premium, repayments of loans etc., should not be excluded from the income. The deduction towards Income Tax/surcharge alone should be considered to arrive at the net income of the deceased."

Therefore, this Court is inclined to follow the larger bench judgment of the Honourable Supreme Court.

7.Accordingly, this Court fixes the monthly income of the deceased at Rs.80,070/-, [Rs.84,279/- (-) Rs.4,209/-] after deducting Rs.4,209/- which was given towards, conveyance allowance, vehicle maintenance allowance and personal allowance.

8.The Tribunal has added 30% towards future prospects. However, it is found that the deceased was employed in a well reputed IT company viz., TCS and it is a permanent job and therefore, as per the judgment of the Honourable Apex Court in National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC), 50% has to be added towards future prospects. After adding 50% towards future prospects, the monthly income would be at Rs.1,20,105/- [Rs.80,070/- (+) Rs.40,035/-]

9.The Tribunal has deducted 1/3rd towards personal expenses whereas the size of the family is 4 and therefore, 1/4th has to be deducted towards personal expenses. After deducting 1/4th towards personal expenses, the monthly income would be at Rs.90,079/- [Rs.1,20,105/- (-) Rs.30,027/-]. Therefore, the yearly income would be at Rs.10,80,948/- (Rs.90,079/- x 12). After deducting 10% towards income tax, the yearly income would be at Rs.9,72,853/- [Rs.10,80,948/- (-) Rs.1,08,094.8/-]

10.The Tribunal has determined the age of the deceased as 30 years, based on Ex.P.4/post mortem certificate. As per the age of the deceased, the right multiplier is "17" whereas the Tribunal wrongly applied "16" as multiplier. Therefore, the loss of contribution would be at Rs.1,65,38,504/- [Rs.9,72,853/- x 17].

11.Loss of consortium:

The Tribunal has awarded a sum of Rs.20,000/- towards loss of consortium and the same is enhanced to Rs.40,000/-.

12.Loss of love and affection:

The Tribunal has awarded a sum of Rs.20,000/- to the child and Rs.10,000/- each to the parents of the deceased towards loss of love and affection. The amount awarded towards loss of love and affection is akin to the amount awarded towards loss of consortium to the spouse. Therefore, a sum of Rs.1,00,000/- is awarded to the minor claimant who was 8 months old at the time of accident and who not have the chance to remember his father's face and lost the love and affection of the father, throughout his life. A sum of Rs.20,000/- each is awarded to the parents of the deceased under this head.

13.Loss of estate, Funeral expenses & Transportation charges:

This Court awards a sum of Rs.15,000/- each under these heads.

Head	Amount (Rs.)
Loss of contribution	16538504
Loss of consortium	40000
Loss of estate	15000
Funeral expenses	15000
Loss of love and affection	140000
Transportation charges	15000
Total	16763504

14.Hence, the total compensation payable in this case is Rs.1,67,63,504/- rounded off to Rs.1,67,70,000/-, along with interest at the rate of 7.5% per annum. Out of the total modified award amount, the wife of the deceased is entitled to get Rs.77,70,000/-, the minor child of the deceased is entitled to get Rs.50,00,000/- and the parents of the deceased are entitled to get Rs.20,00,000/- each.

15.The claimants are 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 claimants, the Tribunal is directed to deduct the requisite court fee from the compensation amount awarded to the claimants, as per the ratio fixed by this Court and thereafter, transfer the remaining award amount to the claimants' account.

16.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. On such deposit being made, the Tribunal is directed to transfer the respective shares of the major claimants along with interest and costs to the personal bank accounts of the major claimants through RTGS within a period of one week thereon. As far as the share of the minor claimant is concerned, the same shall be deposited in interest bearing Fixed Deposit in any one of the Nationalised Banks, till he attains majority. The appellant in C.M.A.No.130 of 2014/wife of the deceased is permitted to withdraw interest accruing on such deposits once in three months and it should be utilised only for the purpose of education and marriage of the minor claimant alone.

17.Accordingly, these appeals are allowed, enhancing the compensation amount from Rs.92,86,832/- to Rs.1,67,70,000/- with interest. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

sai

To

1. The Chief Judge,
   Court of Small Causes,
   Motor Accident Claims Tribunal,
   Chennai 104.

Copy To
   The Section Officer,
   VR Section, High Court,
   Madras-104.

+1cc to Mr.A.S.Bilal, Advocate, S.R.No.62273
+1cc to Mr.M.Krishnamoorthy, Advocate, S.R.No.61718
+1cc to Mr.S.Parthasarathy , Advocate, S.R.No.62887

C.M.A.Nos.130 of 2014 and 3312 of 2017

GJ(CO)
CS/06/01/2020