IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH
AND
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A. No.3312 of 2019

1.Kala
2.Sathiyamoorthy
3.Sharmila
4.Anish (Minor
Represented by his Mother and natural
guardian Kala Panjamirtham(died)
(Amended as per order in M.P.No.45 of 2017
dated 11.07.2017 as the fifth petitioner died)
... Appellants/Petitioners

Vs.

1.Bindu

2.Cholamandalam MS General Insurance Co., Ltd.,
Dare House, No.2, NSC Bose Road,
Chennai-600 001. ... Respondents /Respondents

Prayer: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 29.01.2018 made in M.A.C.T.O.P.No.5956 of 2013 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.II, Small Causes Court, Chennai.

For Appellants : Mr.Muthu Visakan K.V.

For respondents : Mr.N.Vijayaraghavan for R2

JUDGMENT

(Judgment of the Court was made by M.M.Sundresh,J.)

This appeal is preferred against the award 29.01.2018 made in M.A.C.T.O.P.No.5956 of 2013 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.II, Small Causes Court, Chennai, seeking enhanced compensation.

2.The appellants, who are the wife, two major children and one minor children along with mother(since deceased) are the claimants. Before the Tribunal, the appellant sought compensation of Rs.35 lakhs. It is the case of the appellant that the deceased was working as Car Mechanic and earning a sum of Rs.15,000/-. The Tribunal, after having found that there is no evidence with reference to the income, was pleased to fix Rs.6,500/- per month towards notional income and fixed the annual income at Rs.78,000/-. The Tribunal, considering the age of the deceased, added 25% of the income towards future prospects and arrived at the annual income at Rs.97,500/-(Rs.78,000/- + 25%). From the said amount, the Tribunal has deducted 1/3 towards personal and living expenses of the deceased and arrived at Rs.65,000/-(Rs.97,500 -1/3) as monthly contribution to the family. Accordingly, following the multiplier of 14, a sum of Rs.9,10,000/-(Rs.65,000 x 14) was arrived at by the Tribunal as the total loss of dependency. The Tribunal also awarded a sum of Rs.40,000/- towards loss of consortium, Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses and awarded a total compensation of Rs.9,80,000/-.

3.The learned counsel appearing for the appellant would submit that the Tribunal has committed an error in recalling the evidence adduced. There are oral evidence given to show that the deceased was earning Rs.15,000/-. The deduction of 1/3 made towards personal expenses is not correct inasmuch as there were five dependents and therefore, only $1/4^{th}$ of the income ought to have been deducted. No amount has been given towards the loss of love and affection. Thus, the appeal has to be allowed.

4.The learned counsel appearing for the respondent would submit that the Tribunal has wrongly fixed the monthly income at Rs.6,500/- and when there is no evidence to show that the deceased was earning Rs.15,000/- per month. He further submits that the Tribunal has also wrongly awarded under the head 'future prospects'. Thus, the appeal has to be dismissed.

5.Regarding the age and multiplier, there is no dispute. The primary dispute is with respect to the monthly income. Though there is no evidence available other than the oral evidence adduced, the Tribunal is not correct in fixing Rs.6,500/- for the accident, which took place in the year 2013. We are of the view that the deceased was taking care of his family viz., the claimants. Therefore, we can safely presume atleast Rs.10,000/- would have been earned by the deceased. The Tribunal further made an error in deducting 1/3 towards personal expenses, which would be ¼ as the claimants are four persons. No amount has been given towards loss of love and affection. Three persons were entitled under the said head. In such view of the matter, we fix a sum of Rs.10,000/- per month towards pecuniary loss due to the death of the deceased and the annual income works out to Rs.1,20,000/-. If 25% of Rs.30,000/- is added towards future prospects, the annual income works out to Rs.1,50,000/-. From that amount, if 1/4 of Rs.37,500/- towards personal expenses is deducted, the annual dependency works out to Rs.1,12,500/- (Rs.1.50,000- Rs.37,500/-). Considering the age of the deceased, the Tribunal has correctly adopted the multiplier of 14. Accordingly, multiplier 14 is adopted, the total loss of dependency works out to Rs.15,75,000/- (Rs.1,12,500 x 14). The Tribunal has correctly awarded a sum of Rs.40,000/- towards loss of consortium, Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses and the same are confirmed. The Tribunal has not awarded any amount towards loss of love and affection. The deceased left behind his wife and three children. Considering the same, Rs.1,20,000/- is awarded towards loss of love and affection (each Rs.30,000/-). The modified compensation amount is as follows:

Loss of income	--	Rs.15,75,000/-
Loss of love and affection	--	Rs. 1,20,000/-
Loss of consortium	--	Rs. 40,000/-
Loss of estate	--	Rs. 15,000/-
Funeral expenses	--	Rs. 15,000/-
Total compensation		Rs. 17,65,000/-

Rounded off to Rs.18,00,000/-

6.Accordingly, the above civil miscellaneous appeal stands allowed and the award of the Tribunal is enhanced to Rs.18,00,000/-. No costs.

7.The second respondent-insurance company is directed to deposit the modified compensation amount of Rs.18,00,000/- with accrued interest, less the amount, if any already deposited, to the credit of M.C.O.P.No.5956 of 2013 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.II, Small Causes Court, Chennai, within a period of six weeks from the date of receipt of a copy of this judgment.

8.We also direct the Tribunal to transfer the shares of appellants 1 to 3 along with proportionate interest at 7.5% per annum by way of RTGS to the bank account of the said claimants within a period of three weeks from the date of deposit of the award amount. On such transfer, the claimants 1 to 3 are entitled to withdraw the same. The share of the minor 4th appellant is concerned, the same shall be deposited in any one of the Nationalised Banks till he attains majority. The first appellant/mother of the minor 4th appellant is permitted to withdraw accrued interest thereon once in three months directly from the Bank.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

raa

To

Motor Accident Claims Tribunal,
Special Sub Court No.II,
Small Causes Court, Chennai.

+1cc to Mr.N.Vijayaraghavan, Advocate Sr.106520
+1cc to M/s.K.V.Muthuvisakan, Advocate Sr.105500

C.M.A. No.3312 of 2019

rsi[co]
srg 14/07/2020