

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 14.08.2018

Delivered on : 14.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.M.A.No.2054 of 2017

1.P.Vijaya
2.Minor B.Gayathiri
3.Minor B.Devadarshini
4.Minor Deepak ... Appellants/Petitioner
(Minor Petitioners 2 to 4 are rep. by
their Next Friend, Guardian/Mother Vijaya)

Vs.

1. G.Vijayaraghavan
2. The New India Assurance Company Limited,
Divisional Office 720900, NO.3
Main Road, First Floor,
Dindigul - 624 001. ... Respondents/Respondents

(The 1st respondent remained set ex-parte before
the Tribunal. Hence Notice may be dispensed
with in this appeal)

Civil Miscellaneous Appeal filed under Section 173 of M.V.
Act, 1988, against the Judgment and Decree dated 16.09.2016 made
in MCOP.No.585 of 2013 on the file of MACT/Principal District
Court at Namakkal.

For Appellants : Mr.Ma.Pa.Thanagavel

For Respondents : M/s.S.R.Sumathy (for R2)
R1 - Ex-parte

JUDGMENT

Aggrieved by the award dated 16.09.2016 passed by the
Tribunal in M.C.O.P.No.585 of 2013, the appellants/claimants
have preferred this Civil Miscellaneous Appeal.

2.It is the case of fatal accident for death one
Bangarusamy, aged 44 years, who was working as Helper/Moyar in

Tamilnadu Electricity Board, Kundah, drawn salary of Rs.33,280/- pm, the dependants are filed claim petition seeking compensation of 65 lakhs for accident happened on 03.12.2012 and died inspite treatments on 14.01.2013. Upon consideration of the oral and documentary evidence, the Tribunal held that the accident happened due to rash and negligent driving of the first respondent driver and the first Respondent is owner of vehicle, since the said vehicle was insured with the Second respondent insurance company, the Tribunal held that the respondents 1 and 2 are jointly and severally liable to pay the compensation. Based on the pleadings and evidences the learned tribunal granted compensation under following heads:-

Sl.No.	Head	Amount awarded by the Tribunal
1	Loss of Earning capacity (Rs.31,200 X 1/4 X 12 X 14 + Rs.4000/- X 12 X 14)	Rs.44,35,200/-
2	Medical Bills	Rs.1,00,000/-
3	Love and affection	Rs.10,000/-
4	Loss of consortium	Rs.10,000/-
5	Transportation	Nil
6	Funeral	Rs.5,000/-
	Total	Rs.45,60,200/-

3.Since negligence and liability are not disputed either of parties and only Quantum of compensation arrived by the tribunal is inadequate, hence this court not traversed with regard to negligence and Liability fixed by the tribunal are confirmed.

4.The Learned Counsel for Appellants submitted that as per Exs.P13, P15 to P18, and evidence of PW-3 there was proved income of Rs.33,280/-, but however tribunal taken only Rs.31,200/- without assigning any valid reasons and contra evidences and apart from that as per medical bills Ex.P12, the injured /deceased taken treatments from 03.12.2012 to 14.01.2013 a sum of Rs.7,72,339/- and further pleaded that other conventional damages are not properly considered. Hence pray for enhancement of compensation.

5.Per Contra, the Learned Counsel for the insurance company vehemently contented that the Tribunal by appreciating the entire evidences and granted compensation under loss of income as well as medical expenses and other heads also reasonably awarded , hence he pray for dismissal of the appeal.

6.I have heard Mr.Ma.Pa.Thangavel, learned counsel for the appellants and M/s.S.R.Sumathy, learned counsel for the 2nd respondent and also perused the materials available on record.

7.On appreciating the entire evidence of the appellants that the deceased had working as Helper/Moyar in Tamilnadu Electricity Board, Kundah , drawn salary of Rs.33,280/- pm as per revised pay, which was marked as Ex.P-16, hence this Court unable to agree with the arguments of the counsel for the Respondents that tribunal correctly taken monthly income, thus this court fixed the last drawn salary as monthly income and added 30% towards future prospects as per Pranny sethi judgment of the Hon'ble Apex Court, since the deceased aged only 44 years. This court accepted the arguments of the Counsel for insurance company that the tribunal taken a sum of Rs.4,000/- towards loss of income after retirement and arrived a sum of Rs.5,04,000/- which was granted without any basis and hence it is liable to set aside.

8.It is relevant to point out that the age of the deceased was 44 years and tribunal rightly taken proper multiplier of 14 and deducted 1/4 toward personal expenses. Further, it is rightly pointed out that by the Learned counsel for insurance company that tribunal failed to deduct income tax . Thus the loss of income is re -worked as follows:-

If So,

Monthly income is	: Rs. 33,280/-
Add 30% Future prospectus (i.e)	: Rs. 9,984/-

Thus total amount	: Rs. 43,264/- PM
Per Annum (Rs.43,264 x 12)	: Rs. 5,19,168/-
The income tax deduction as per rulings reported in CDJ 2017 MHC 3084, if so	

Total Annual income is Rs.5,19,168/-

Less: Exemption u/s 80C of the Income Tax Act Rs.1,00,000/-

Taxable income Rs.4,19,168/-

Income tax Upto Rs.1, 80,000/- : Nil
From Rs.1,80,001/- to Rs.5,00,000/-
(10%) (2,39,168) : Rs.23,916/-

Education Chess & Surcharge (3%) : Rs. 717.50/-

Thus, the Total Income Tax payable is : Rs.24,634.50/-

Hence, the total annual income arrived as Rs.5,19,168/- minus Rs.24,635/- towards tax and the loss of dependency for annual will be as Rs.4,94,533/- and proper multiplicand of 14 and deducted 1/4, thus contribution to family is Rs.51,92,596/-.

9. The learned counsel for appellants further argued that as per the evidence of PW1, who is wife of deceased and as per Consolidated medical bills marked as Ex.P-12 series a sum of Rs.7,72,339/- spend for medial expenses to safe guard life of deceased, moreover the respondents insurance not disputed medical expenses during the cross examination of PW-1, hence it is not appropriate for tribunal to reject major portion medical bills by simply held that prescriptions not produced inspite fact that two discharge summaries were marked as Ex.P-7 and Ex.P-8 inter alia it is seen that the deceased was inpatient for more then 42 days and succumbed to the injuries; which was issued by the two hospitals and all the prescriptions, treatments were incorporated in the discharge summary. Hence this court no hesitation to set aside the findings of tribunal that a sum of Rs.1 lakh alone is eligible towards medial bills instead of granting entire medical bill of Rs.7,72,339/-. Accordingly this court awarded entire medical expenses of Rs.7,72,339/-.

10. That the tribunal failed to consider that as per the evidence of PW 1 he was inpatient for 42 days in the Kovai Medical Centre Hospital at Coimbatore and M.M. Hospital, Namakkal indifferent spells and underwent seven surgeries which was clearly proved through the medical records, therefore this court considering the pain and agony suffered by the injured deceased and mental agony under gone by family members, it is deem fit to award a sum of Rs.25,000/-, which was not granted by tribunal under the head of pain and suffering and mental agony.

11. As per the medical records it revealed that the injured is native of Namakkal Taluk and District and he is taking treatment in the different spell at Kovai medical centre Hospital at Coimbatore and M.M. Hospital, Namakkal the Tribunal failed to award separate head under the transport to hospitals, considering the same this Court awarded a sum of Rs.25,000/- under separate head to the transport to hospital. As rightly pointed by the Learned counsel for the appellants that Loss of Love and affection and consortium has not properly awarded, hence by relying Pranny Sethi, this court enhanced Loss of Affection for minors each Rs.50,000/- and as for as Consortium is concerned asum of Rs.40,000/- granted and for Loss of estate and Funeral expenses a sum of Rs. 15,000/- has been granted and with regard to damage of cloths and articles the sum of Rs. 5,000/- has been awarded.

12. The award of Tribunal is modified and enhanced as follows:-

Sl.No.	Head	Amount now seeking
1	Loss of Income (Rs.4,94,533/- X 14 X 1/4)	Rs.51,92,596/-
2	Love and affection for 3 Minors (Rs.50,000/-	Rs.1,50,000/-
3	Funeral Expenses	Rs.15,000/-
4	Loss of estate	Rs.15,000/-
5	Transportation to Hospitals	Rs.25,000/-
6	Pain & suffering & mental agony to family members	Rs.25,000/-
7	Loss of consortium	Rs.40,000/-
8	Medical bills as per Ex.P12	Rs.7,72,339/-
	Total	Rs.62,34,935/-
	Rounded off	Rs.62,35,000/-

13.As stated supra, at the time of accident, the offending vehicle was insured with the Second respondent insurance company. Therefore, the Second respondent insurance company is liable to pay compensation of Rs.62,35,000/- with interest at the rate of 7.5% per annum.

14.In the result, the Civil Miscellaneous Appeal is partly allowed with proportionate costs. The compensation of Rs.45,60,200/- awarded by the Tribunal is enhanced to Rs.62,35,000/- payable with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit within a period of eight weeks from the date of receipt of a copy of this judgment, less the amount already deposited, if any. On such deposit, the appellants/claimants are permitted to withdraw enhanced award amount with accrued interest, as per ratio fixed by the tribunal, on filing application before the Tribunal, less amount if already withdrawn.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

vs

To

1.The MACT/Principal District Court at Namakkal.

2.The Section Officer,
V.R.Section, High Court,
Madras.

+1 cc to Mr.Ma.P.Thangavel, Advocate, S.R.No.24830

+1 cc to M/s.S.R.Sumathy, Advocate, S.R.No.24016

C.M.A.No.2054 of 2017

NRJK (CO)
SSM(19/09/2019)



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