IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.04.2019

CORAM :

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
and
THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.No.991 of 2017

1.C.K.Mini
2.K.A.Febin(Minor)
3.K.A.Robin (Minor)
(Minor appellants are represented by their mother and natural guardian C.K.Mini, the first appellant herein) ... Appellants/ Petitioners

vs.

1.S.Murugan
2.Royal Sundaram Alliance Insurance Co., Limited, No.21, Pattulos Road, Chennai 600 002.
(1st respondent remained exparte before the Tribunal) ... Respondents/ Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act,1988 against the Award and decree, dated 28.10.2014 made in M.C.O.P.No.996 of 2011, on the file of the Motor Accident Claims Tribunal (Chief Judge, Small Causes Court) Chennai.

For appellants : Mr. V.Balamurugan

For 2nd respondent : Mr.Vijayaraghavan

J U D G M E N T

(Judgment of the Court was delivered by C.SARAVANAN,J.)

The appellant- claimants are aggrieved by the fair and decretal order dated 28.10.2014 passed by the Motor Accident claims Tribunal, (Chief Judge) Court of Small Causes, Chennai in M.C.O.P.No.996 of 2011(for brevity referred to as the Tribunal andd the impugned order respectively.).

2. By the impugned order dated 28.10.2014, the Tribunal has awarded a sum of Rs.25,45,800/- to the claimants. The appellants/claimants 1 to 3 are the wife and two minor children of the deceased Ashok.

3. The petitioner in M.C.O.P.No.1181 of 2011 one K.P.Ojes met with an accident on 09.12.2010 at 16.30 hrs while returning his house on a motorcycle. They were coming from north to south direction, when a lorry bearing Registration No.TN 04 P 3668, belonging to the first respondent, driven by its driver in a rash and negligent manner and hit the motorcycle .

4. Due to the impact, the deceased Ashok fell and sustained fatal injuries and died on the spot while the rider of the motor cycle viz., K.P.Ojes sustained grievous injuries.

5. The claimants sought for a total compensation of Rs.1,00,00,000/- in M.C.O.P.No.996 of 2011. The Tribunal has awarded a sum of Rs.25,45,800/ to the appellants in M.C.O.P.No.996 of 2011.

6. The deceased was working as a machine operator and was drawing a salary of Rs.55,000/- p.m. The Court has considered the gross income of the deceased as Rs.25,775/- with bonus and the net income at Rs.18,600/- . Thus, the Tribunal has awarded a sum of Rs.25,45,800/- together with interest at 7.5% p.a. from the date of the claim petition to the appellants 1 to 3 herein who were the claimants before the Tribunal. The break up of the amount awarded by the Tribunal are summarised below:-

S.No.	Heads of compensation	Amount awarded by the Tribunal
1	Loss of pecuniary (Rs.18,600 x 2/3 x12x16 = Rs.23,80,800)	Rs.23,80,800
2	Loss of consortium to the 1st appellant	Rs. 50,000
3	Loss of love and affection to the appellants 1 to 3	Rs. 75,000
4	Loss of estate	Rs. 10,000
5	Funeral Expenses	Rs. 25,000

6	Transportation	Rs. 5,000
	Total	Rs.25,45,800

Out of the total compensation, the first appellant was entitled to Rs.13,45,800/-and the appellants 2 and 3 are entitled to Rs.6,00,000/- each.

7. Aggrieved by the same, the appellants have preferred the present appeal.

8. The learned counsel for the appellants submitted that the copies of salary slip of the deceased Ashok and deposition of P.W.3 viz., S.Thangavel have been over looked. He further submitted that if the loss of income on account of death is considered and after proper deduction, the appellants would be entitled to a total compensation of Rs.45,00,000/-.

9. The learned counsel for the appellants relied upon the Judgment of the Hon'ble Supreme Court reported in National Insurance Co., Ltd., vs. Indira Srivastava and others, 2008 (1) TN MAC 166 (SC) wherein it is stated that just compensation has to be given to the appellants.

10. As per the aforesaid decision, while arriving at just compensation, the income of the deceased employed in private sector company would include perks which are beneficial to members of entire family. Reimbursement of rent, bonus, payable as part of salary, contribution to P.F, superannuation benefits, contribution towards gratuity, insurance of medical policy for self and family and education scholarships are beneficial to family. However, medical reimbursement would not come within purview of benefits to family. Statutory amount of tax payable must be deducted from amount of income and therefore, the appellants were entitled to enhance the compensation as against the award by the Tribunal.

11. We have considered the rival submission and also perused the documents available on records.

12. The appellants are seeking enhancement by adding perks which cannot be factored to determine the net income. We are therefore not adding these into the net income .

13. We are of the view that the enhanced compensation sought for by the appellants is exorbitant. The net income of the deceased is therefore, taken as Rs.22,000/- p.m. after excluding those perks which are not accrued to family. Therefore, the

amount of compensation awarded under various heads are modified as follows:-

S.No.	Heads and calculation	Amount awarded by this Court
1	i) Monthly Income Rs.22,000 ii) Future Prospects (50%) Rs.11,000 .... Rs. 33,000 .... iii) Multiplier 16 iv) Pecuniary Loss (Rs.33,000 x2/3x12x16) Rs.42,24,000	Rs.42,24,000
2	Loss of consortium to the 1st appellant	Rs. 40,000
3	Loss of love and affection to the minor children	Rs. 80,000
4	Funeral Expenses	Rs. 15,000
5	Loss of Estate	Rs. 15,000
6	Transport	Rs. 5,000
	Total	Rs. 43,79,000

14. Considering the fact that the appellants are young widow and two minor children, we are rounding of the ultimate compensation of Rs.45,00,000/- from Rs.43,79,000/- as calculated above. We are thus inclined to enhance the amount to

Rs.45,00,000/-. Accordingly, the impugned order is modified with the following directions:-

i) The second respondent/Insurance Company is directed to deposit a sum of Rs.45,00,000/- together with interest at the rate of 7.5% p.a.from the date of petition till the date of deposit, less the amount already deposited if any, within a period of eight weeks from the date of receipt of copy of this order.

ii) On such deposit, the first appellant/claimant is entitled to Rs.15,00,000/- and the two minor children are entitled to Rs.15,00,000/- each together with interest at the rate of 7.5% p.a.

iii) The first appellant/claimant is permitted to withdraw the above said amount. The appellants are the minors 2 and 3, their shares should be deposited in any one of the nationalised bank till they attain majority. However, the interest accrued on the minors share shall be withdrawn by their guardian, mother /1st appellant, herein once in three months.

15. In view of the above, the civil miscellaneous appeal is partly allowed. No cost.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

kkd

To

The Chief Judge, Small Causes and
Motor Accident Claims Tribunal, Chennai.

+1 cc to Mr.K.Malaikkannu, Advocate, Sr.No. 36978
+1 cc to Mr.N.Vijayaraghavan, Advocate, Sr.No. 37931

Copy To: The Section Officer,
V.R.Section, High Court, Madras.

C.M.A.No.991 of 2017

VGI(CO)
CSL/11.07.2019