IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:30.01.2019

CORAM:

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

CMA.No.2687 of 2018

1.K.Priyadharshini
2.M.S.K.Vishrudha (Minor)
3.S.Radhabai
4.Solaiappan .. Appellants/Petitioners

Vs

1.M/s.Gammon India Limited
Mumbai Port Trust, Mumbai-38

2.ICICI Lombard General Insurance Company Limited
Chennai-3
.. Respondents/Respondents

Prayer:-
This Civil Miscellaneous Appeal is filed, against the judgement and decree, dated 23.02.2018 made in MCOP.No.3166 of 2013, by the learned II Judge, Small Causes Court (MACT) Chennai.

For Appellants : Mr.S.Raveendran
for Mr.A.Shanmugaraj

For Respondents : Mr.S.Umapathy-R1
Ms.R.Srividhya-R2

JUDGEMENT
(Order of the Court was made by N.KIRUBAKARAN, J.)

This Civil Miscellaneous Appeal has been filed by the claimants, against the judgement and decree, dated 23.02.2018, made in MCOP.No.3166 of 2013, by the learned II Judge, Small Causes Court (MACT) Chennai, seeking enhancement of the compensation awarded by the Tribunal.

2. In and by the impugned award, in the above claim petition filed by the claimants/ Appellants, who are the legal

heirs of the deceased, namely, S.Karthikeyan, aged about 36 years, a Consultant for Foreign Development Software Projects, Self-Employee, who died in a road accident on 15.01.2013, when he was riding his motorcycle along Annasalai, from North to South, a Crane belonging to the 1st Respondent, insured with the 2nd Respondent, driven in a rash and negligent manner, hit against him, a sum of Rs.21,34,000/-, as against the claim of Rs.1,00,00,000/-, was awarded as total compensation to the claimants, along with interest at 7.5% p.a. from the date of the petition till the date of payment.

3. Heard the learned counsel for the Appellants and the learned counsel for the Respondents.

4. The impugned award of compensation of Rs.21,34,000/- has been determined, taking the monthly income of the deceased at Rs.11,000/- p.m. and by applying the multiplier of 15. In this appeal, the claimants have claimed a sum of Rs.1,03,69,745/- as total compensation. The impugned award of compensation is being questioned by the claimants only on the aspect of quantum of compensation, on the ground that the monthly income of deceased arrived at by the Tribunal is erroneous and improper, since the deceased was earning a sum of Rs.9,50,000/- per annum, as per the documents produced by them and also on other pecuniary heads, no compensation was awarded.

5. As regards the negligence aspect, the Tribunal, considering the evidence on record, has held that there was negligent on the part of the rider of the offending vehicle and that the accident had occurred only due to the rash and negligent driving of the driver of the offending vehicle. The finding recorded by the Tribunal with regard to the actionable negligence has not been assailed by the Insurance Company, by filing an appeal or cross objection. Therefore, there is no question of going into the issue of negligence. Hence, the said finding of the Tribunal, with regard to the negligence aspect fixing the same on the part of the driver of the offending vehicle, is liable to be confirmed and accordingly, it is confirmed.

6. It is submitted by the learned counsel for the Appellants that in spite of production of sufficient material evidence to show the monthly income of the deceased, such as bank statements, Ex.P21, Ex.P22, Ex.P23, Ex.P30 and Ex.P31, the Tribunal notionally fixed the monthly income of the deceased at Rs.11,000/-, which is not just and proper. He would submit that the deceased was a B.E. and MBA Degree Holder and he was executing the Projects in the field of Software. He relied upon the aforesaid exhibits to prove that the annual income of the deceased is more than Rs.8 lakhs and hence, the Tribunal ought

to have granted the compensation as claimed by the Claimants.

7. On the other hand, the learned counsel for the 2nd Respondent would dispute the monthly income as claimed by the learned counsel for the Appellants. She would submit that only the bank statements have been produced and no further proof has been filed, like, income tax return, etc. and that even the income returns filed are not in consonance with the bank statements and hence, the award of compensation granted by the Tribunal is just and proper.

8. This Court considered the rival submissions of the learned counsel for the parties.

9. It is evident from Exs.P20 to Ex.P27 and Ex.P30 and Ex.P31, bank statements that more amounts have been received by the deceased.The above bank statements would show the amounts credited into the account of the deceased.

10. Ex.P22 shows the income of the deceased for the period from 01.04.2009 to 31.03.2010. Ex.P27, bank statements, would reflect the income of the deceased for the period from 01.4.2011 to 30.3.2012. Ex.P30 and Ex.P31 would reflect the income of the deceased for the period from 01.04.2012 to 31.05.2013.

11. Following are the income derived as per Ex.P22, Ex.P27, Ex.P30 and Ex.P31:-

i. Ex.P22 = Rs.9,54,485.17/-
ii.Ex.P27 = Rs.8,30,572.46/-
iii.Ex.P30 and Ex.P31 for the period from 1.4.2012 to 31.5.2013 = Rs.14,23,643.58/-

12. Thus, the average income of the previous years has been proved. Therefore, this Court determines the annual income of the deceased, by calculating the average income of the three previous years. If all the three amounts are put together, it would constitute Rs.32,08,701.21/- and thus, average income would come to Rs.10,69,567.07/-(Rs.32,08,701.21/- divided by 3). Towards income tax, 30% is to be deducted. Thus, the loss of annual dependency would come to Rs.7,48,696.95/- (Rs.10,69,567.07/- minus 30% of Rs.10,69,567.07/- towards income tax).

13. The family of the deceased is consisting of four Members and therefore, 1/4 is to be deducted. After deduction of 1/4th, the loss of annual income would be Rs.5,61,522.71/- (Rs.7,48,696.95/- minus 1/4th of Rs.7,48,696.95/-).

14. The age of the deceased at the time of the accident is proved to be 36 years as per Ex.P11, Degree certificate. Therefore, the proper multiplier to be applied, as per the decision of the Honourable Supreme Court reported in 2009-6-SCC-121 (Sarla Verma and others Vs. Delhi Transport Corporation and another), is 15. Thus, the total loss of dependency would come to Rs.84,22,840.68/-, (Rs.5,61,522.71/- x 15), which is rounded off to Rs.Rs.84,22,840/- (Rupees Eighty Four Lakhs Twenty Two Thousand Eight Hundred and Forty Only).

15. Apart from the total loss of dependency as arrived at above, under the other pecuniary heads, a sum of Rs.40,000/- towards loss of consortium, Rs.1,00,000/- towards loss of love and affection, Rs.15,000/- towards funeral expenses, Rs.15,000/- towards transportation and Rs.15,000/- towards loss of estate are awarded. Thus, the claimants are entitled to a total compensation of Rs.86,07,840/-/- (Rupees Eighty Six Lakhs Seven Thousand Eight Hundred and Forty Only). In so far as the rate of interest at 7.5% p.a. awarded by the Tribunal is concerned, it is needless to say that the claimants shall be entitled to interest on the entire amount from the date of the petition till the date of realization at the rate of 7.5 per cent p.a. in the light of the decisions of Honourable Supreme Court rendered in the cases of Dharampal and others UP State Road Transport Corporation [2008-ACJ-2041] and in Tamil Nadu State Transport Corporation Vs. S.Rajapriya (2005-6-SCC-236).

16. In the result, this Civil Miscellaneous Appeal is allowed in part. The impugned award of Rs.21,34,000/- is enhanced to Rs.86,07,840/-, as mentioned above. The claimants are directed to pay the court fee for the enhanced award amount. On payment of the court fee for the enhanced award amount, the claimants are entitled to a total compensation of Rs.86,07,840/- (Rupees Eighty Six Lakhs Seven Thousand Eight Hundred and Forty Only), with interest 7.5% p.a. from the date of the petition till the date of realisation, as detailed below:-

S.No	Category	Award Amount (Rs.)
1	Loss of Dependency	8422840
2	Loss of Consortium	40000
3	Loss of Love and Affection	100000
4	Loss of Estate	15000
5	Funeral Expenses	15000
6	Transportation Expenses	15000
Total Compensation		8607840

17. The 2nd Respondent/Insurance Company is directed to deposit the enhanced award amount with interest at 7.5% p.a.

from the date of the claim petition till the date of deposit, within a period of eight weeks from the date of receipt of a copy of this order

18. On such deposit being made by the 2nd Respondent, the claimants 1 to 4 are entitled to Rs.43,03,920/-, Rs.21,51,960/-, Rs.10,75,980/- and Rs.10,75,980/-, with accrued interest, respectively. The claimants 1, 3 and 4 are permitted to withdraw their respective shares with proportionate interest. The share of the minor claimant shall be invested in any one of the Nationalised Banks, till she attains majority. The 1st claimant, being the mother, natural guardian and next friend of the 2nd minor claimant, is entitled to withdraw the interest from the deposit of the share of the 2nd minor claimant once in three months.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

Srcm

To:

1. II Judge, Small Caused Court (MACT),
   Chennai.

2. M/s.Gammon India Limited
   Mumbai Port Trust, Mumbai-38

3. ICICI Lombard General Insurance Company Limited
   Chennai-3

4. The Section Officer,
   Vernacular Records, High Court,
   Madras-104.

+1cc to Mr.S.Umapathy, Advocate, S.R.No.7720
+2cc to Mr.A.Shanmugaraj, Advocate, S.R.No.7979, 8267
+1cc to Ms.R.Srividhya, Advocate, S.R.No.8971

CMA.No.2687 of 2018

RSK(CO)
CS/14/05/2019