IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.02.2019

CORAM:

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

C.M.A. No. 2782 of 2018

M/s.Iffco Tokio General Insurance Co., Ltd
No.28, North Usman Road,
T.Nagar, Chennai ... Appellant

Vs.

1. Barathi
2. Akask (Minor)
3. Aswathi (Minor)
4. Abish (Minor)
5. Chellammali
6. Elumalai
7. Sundaramoorthy ... Respondents

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act, 1988 praying to set aside the judgment and decree dated 13.07.2017 in M.C.O.P No. 8051 of 2013 on the file of the Motor Accident Claims Tribunal , V Court of Small Causes, Chennai.

For Appellant : Mr.N.Vijayaraghavan

For Respondents : Mr.K.Varadha Kamaraj for R1 to R5
R6 - died
R7 - no appearance

JUDGMENT
(Delivered by M.M.Sundresh,J.)

As against the award of the Tribunal granting a sum of Rs.32 lakhs with 7.5% interest per annum from the date of the claim, the present appeal is filed.

2. The respondents before us are the wife, parents and minor children of the deceased. The sixth respondent died on 20.11.2013. The age of the deceased was 32 years. His occupation was stated to be that of Two-wheeler Mechanic. Exs.P6 & P7 have been marked as documentary evidence to substantiate the monthly income of Rs. 20,000/- from the job of Mechanic. The Tribunal fixed Rs.10,000/- per month. For future prospects 50% was applied and deduction of one-forth was made while adopting multiplier 16. For the loss of consortium, love and affection, loss of estate and funeral expenses, amounts have been added under different heads and, accordingly, the award of Rs.32 lakhs has been fixed, though the claimants/respondents themselves sought for Rs. 20 lakhs.

3. Learned counsel appearing for the appellant would submit that it is a case of award passed beyond the claim made,

Income Fixed	Rs.10,000/-
Future Prospects - 40%	Rs.14,000/-
Annual Dependency	Rs.14,000/- x 12 x ¾ = Rs. 1,26,000/-
Multiplier - 32 years	16
Pecuniary Loss	1,26,000/- x 16 = Rs. 20,16,000/-
Loss of Consortium	Rs.40,000/-
Loss of Love and affection	Rs.40,000/- x 5 = Rs. 2,00,000/-
Funeral Expenses	Rs.15,000/-
Loss to Estate	Rs.15,000/-
Total	Rs.22,86,000/-

4. Learned counsel appearing for the respondents/claimants would submit that Tribunal has committed an error in not taking into consideration the income at Rs.20,000/-. Therefore, even assuming 40% has been added as future income, the award will have to be sustained.

5. We are quite conscious of the fact that law provides for fixation of just and fair compensation. However, we find it a disturbing trend, wherein compensation has been enhanced beyond the one claimed. We find that the Tribunal has without any basis fixed 50% towards future prospects. We are dealing with a case of self-employment. We also take judicial notice of the fact that mechanic shops are on the decline. Now, the manufacturers themselves have taken up the aforesaid job. This is a case with both the two-wheelers and four-wheelers. Thus, we do not find any error in the fixation of Rs.10,000/- as the income adopted by the Tribunal. The Tribunal has also fixed Rs.1 lakh for the loss of consortium and Rs.8 lakhs towards loss of love and affection. The aforesaid view would be sustained in the eye of law especially when we go by the recent pronouncement of the Constitution Bench in National Insurance Company Ltd. v. Pranay Sethi, reported in (2017) 16 SCC 680.

6. Though the learned counsel appearing for the appellant has fairly submitted that the total sum of Rs.22,86,000/- can be awarded, taking into consideration the fact that the first claimant/respondent (wife of the deceased) is aged above 30 years, with three minor children aged between 5 - 8 years coupled with two aged parents, it would be fair and appropriate to fix the compensation at Rs. 25 Lakhs. We do so for the reason that the sum of Rs.10,000/- fixed as salary of the deceased, though we find to be wrong, can always be enhanced by taking into consideration of the facts and circumstances of the case. Accordingly, we quantify the amount payable as Rs. 25 lakhs, more particularly taking note of the fact that three of the claimants are young children.

7. Out of the abovesaid amount, the 1st claimant (wife of

children) at Rs.50,000/- each. The share amount awarded in favour of the claimants 2 to 4, who are the minor children, are directed to be deposited in a nationalized bank till their attainment of majority or three years from the date of order whichever is later. The interest accrued till they attain majority is permitted to be withdrawn by the 1st claimant once in three months, for the welfare of the said minor children.

8. Needless to state, that the amount due, as indicated above, payable to the claimant Nos.1 and 5 should be directly deposited in their account in a nationalized bank. The appellant would have to undertake the aforesaid exercise within a period of eight weeks from the date of receipt of a copy of the order.

The appeal is disposed of with above said observations. No costs. Consequently, connected CMP No. 21210 of 2018 stands closed.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

ssm

To:

The V Judge of Court of Small Causes
Motor Accident Claims Tribunal,
Chennai.

+1cc to Mr.K.Varadhakamaraj, Advocate, S.R.No. 9365
+1cc to Mr.M.B.Gopalan Associates, Advocate, S.R.No. 10388

C.M.A.No. 2782 of 2018

VBA(CO)
GN(09/05/2019)