IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2019

CORAM :

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

C.M.A.No.2948 of 2018

1.B.Mariammal
2.Vinayagaselvi
3.B.Karthikraja
4.B.Muralikumar (Minor)
(Rep.by mother and guardian
Mrs.B.Mariammal) ... Appellants

Vs.

1.E.Alagu Pandian
2.Cholamandalam MS General Insurance Company Limited,
II Floor, Dare House, No.2, NSC Bose Road,
Chennai - 600 001. ...Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 21.06.2018 made in M.A.C.T.O.P.No.6464 of 2016 on the file of the Learned Special Sub Court No.1, Motor Accident Claims Petitions, Small Causes Court, Chennai.

For Appellants : Mr.R.Jayaprakash for
Mr.G.Rajkumar

For Respondents : Mr.M.B.Raghavan for
Mr.N.Vijayaraghavan for R2.

JUDGMENT

(Judgment of the Court was delivered by N.KIRUBAKARAN, J)

The appeal has been preferred by the claimants aggrieved over the quantum of Rs.44,36,900/- for the death of one Mr.Balaganesan, aged about 49 years, working as Grade I Foreman, TANGEDCO drawing a salary of Rs.45,750/- per month in the accident occurred on 18.08.2016, when the deceased was travelling as a pillion rider in the motorcycle at Kollam Thirumangalam main road which was hit by a goods vehicle belonging to the 1st respondent, insured with the second respondent/insurance company, driven rash and negligently.

2.Heard Mr.Jayaprakash, learned Counsel for the appellants and Mr.M.B.Raghavan, learned Counsel for the 2nd respondent/Insurance Company and perused the records.

3.Since, the claimants alone have come before this Court regarding the quantum of compensation and there is no appeal by the Insurance Company, the liability aspect is not gone into. Moreover, the Insurance Company has already accepted the compensation and not chosen to file any appeal. Therefore, the only question is with regard to the quantum of compensation.

4.Mr.Jayaprakash, learned Counsel for the appellants would submit that even though Ex.P.5 viz., salary certificate would prove that the gross salary is Rs.45,750/-, the tribunal took only Rs.28,799/- being the net salary as income. It is a well settled law that the gross salary alone has to be taken as monthly income and therefore, the determination made by the tribunal is set aside and as per Ex.P.5, salary of the deceased is redetermined as Rs.45,750/-.

5.The age of the deceased is 49 as proved by Ex.P.1, Aadhar Card and therefore, 30% alone has to be added towards future prospects. If 30% is added towards future prospects, the loss of income would be Rs.45,750/- + 30% = Rs.59,475/-.

6.The size of the family is 4 and therefore, the deduction towards personal expenses is 1/4 and that was rightly adopted by the tribunal and the same is confirmed. If 1/4th is deducted, the loss of income would be Rs.59,475/- - 1/4th = Rs.44,606.25/-. The right multiplier of '13' has been taken by the tribunal as the age of the deceased is 49 as per the Judgment in "Sarala Verma's case" and the same is confirmed. Hence, the loss of income would be Rs.44,606.25/- x 12 x 13 = Rs.69,58,575/-. Further, 10% has to be deducted towards income tax deduction and therefore, after deduction, the loss of income would be Rs.69,58,575 - 10% = Rs.62,62,718/-.

7.The sum of Rs.40,000/- awarded by the tribunal towards loss of consortium and Rs.1,50,000/- towards loss of love and affection and Rs.15,000/- each awarded towards funeral expenses and loss of estate and Rs.5,000/- awarded towards transport charges are all confirmed. Therefore, the sum of Rs.44,36,900/- awarded by the tribunal is modified as follows:

SI.No	Head	Amount (Rs.)
1.	Loss of income	62,62,718/-
2.	Loss of Love and affection	1,50,000/-
3.	Funeral Expenses	15,000/-
4.	Loss of consortium	40,000/-
5.	Loss of estate	15,000/-
6.	Transportation	5,000/-
	Total	64,87,718/-
	Rounded off	65,00,000/-

8.Hence, the total compensation payable in this case is Rs.65,00,000/-. The interest awarded by the Tribunal at the rate of 7.5% per annum is confirmed. Further, Registry is directed to refund the excess Court fee paid by the Appellants, as mandated under Section 70 of the Tamil Nadu Court Fees and Suits Valuation Act, 1955.

9.The 2nd respondent/Insurance company is directed to deposit the entire award amount before the trial Court along with interest and costs after deducting the amount, if any, already deposited within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the tribunal is directed to transfer the respective shares of the major claimants through RTGS as per the ratio fixed by the Tribunal within a period of one week. As far as the minor share is concerned, the same shall be deposited in interest bearing fixed deposit in any one of the Nationalized Banks till he attains majority. The interest accruing on such deposit is permitted to be withdrawn by the 1st appellant once in three months.

10. Accordingly, this appeal is partly allowed, by enhancing the award of the Tribunal from Rs.44,36,900/- to Rs.65,00,000/-. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Special Sub Court No.1,
Motor Accident Claims Tribunal,
Small Causes Court,
Chennai.

+1 cc to M/s.N.Vijayaraghavan, Advocate Sr.No. 58772
+2 cc to M/s.R.Anitha, Advocate Sr.Nos.58155

AKM/12.12.19/3P-5C /