IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2019

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN

AND

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A. Nos. 3036 & 3038 of 2018

C.M.A. No. 3036 of 2018

1. S. Saravanan
2. S. Rukmani
3. R. Srinivasan
4. S. Usharani ..Appellants/Petitioners

Vs.

1. Rupesh Kumar Jain

2. United India Insurance Co. Ltd.,
Regional Office, Silingi Buildings,
New No. 134, Old No. 40-42
Greams Road, Chennai - 600 006. ..Respondents/Respondents

Prayer: Civil Miscellaneous Appeal as against the judgment and decree dated 23.07.2018 in M.C.O.P. No. 5470 of 2016 on the file of Motor Accidents Claims Tribunal (Special Sub Court No.2), Chennai.

For Appellants :: Mr.Mohan Babu

For Respondents:: R1 ex parte
Mr.D. Baskaran for R2

C.M.A. No. 3038 of 2018

1. S. Saravanan
2. S. Rukmani ..Appellants/Petitioners

Vs.

1. Rupesh Kumar Jain

2. United India Insurance Co. Ltd.,
Regional Office, Silingi Buildings,
New No. 134, Old No. 40-42
Greams Road, Chennai - 600 006. ..Respondents/Respondents

Prayer: Civil Miscellaneous Appeal as against the judgment and decree dated 23.07.2018 in M.C.O.P. No. 5471 of 2016 on the file of Motor Accidents Claims Tribunal (Special Sub Court No.2), Chennai.

For Appellants :: Mr.Mohan Babu

For Respondents:: R1 ex parte
Mr.D. Baskaran for R2

J U D G M E N T

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

The above appeals have been preferred by the claimants as against the award of Rs.10,12,800/- granted by the Tribunal for the death of one E. Indhumathi, aged about 24 years, vegetable vendor, allegedly earning about Rs.14,000/- per month and the award of Rs.14,58,000/- granted by the Tribunal for the death of one S. Elavarasan, Car Driver, aged about 27 years, alleged earning about Rs.18,000/- per month, in the accident which occurred on 19.07.2016 when the motor cycle driven Elavarasan with his wife Indumathi as pillion rider from East to West on Walajah Road was hit down by another motorcycle, driven rashly and negligently.

2. Heard Mr.D. Bhaskaran, learned counsel for the Insurance Company and Mr. Mohan Babu for the claimants. Since the 1st respondent/owner of the vehicle remained ex parte before the Lower Court, notice is dispensed with as per the Full Bench Judgment of the Madhya Pradesh High Court rendered in Mrs. Jamuna Bai V. Chhote Singh reported in I (2004) Acc. 190 (FB).

3. The only question to be decided in the above appeals is with regard to the quantum of compensation awarded.

4. In the absence of any material evidence to prove that the deceased E. Indhumathi was earning about Rs.14,000/- per month, the Tribunal determined her monthly income at Rs.6500/-, added 40% towards "Future Prospects", deducted 50% towards "Personal Expenses" as parents and in-laws were the only dependants, adopted multiplier 18 and arrived at Rs.9,82,800/- as "Loss of Income". The sum of Rs.6500/- determined by the Tribunal as monthly income of deceased Indumathi is too low considering the date of accident, i.e, 19.07.2016. The Honourable Supreme Court, in the decision rendered in Syed Sadiq and Others V. Divisional Manager, United India Insurance Company Limited reported in 2014(1) TN MAC 459 (SC), determined the monthly income of a vegetable vendor, who sustained injuries in the accident, which took place in the year 2008, at Rs.6500/- whereas the accident in the instant case had taken place in 2016, i.e, 13 years after the accident in the above referred to judgment. Therefore, it is appropriate to re-determine the monthly income of deceased E. Indhumathi at Rs.9000/- per month. Accordingly, the monthly income of deceased E. Indhumathi is fixed at Rs.9000/- per month.

5. The Tribunal rightly added 40% towards “Future Prospects” as deceased E.Indhumathi was aged 24 years as proved by Ex.P3 postmortem certificate. The Tribunal is also correct in deducting 50% towards her “Personal Expenses” as in-laws and parents are the only legal heirs. The Tribunal is also justified in adopting multiplier 18 considering the age of the deceased in the light of the judgment of the Honourable Supreme Court in Smt. Sarla Verma & Others V. Delhi Transport Corporation and Another reported in (2009) 4 MLJ (SC) 997. Taking the monthly income as Rs.9000/- and applying the above, “Loss of Dependency” is arrived at as hereunder:

Monthly Income :: Rs.9000/-
ADD: Future Prospects at 40% :: Rs.9000/- (+) 40% (Rs.9000/-)
:: Rs.12,600/-
LESS:Personal Expenses at 50% :: Rs.12,600/- (-) 50% (Rs.12,600/-)
Monthly Contribution :: Rs.6,300/-
Annual Contribution :: Rs.6300 x 12
Applying Multiplier 18,
Loss of Dependency :: Rs.6300 x 12 x 18
:: Rs.13,60,800/-

The amounts awarded towards “Loss of Estate” and “Funeral Expenses” to the tune of Rs.15,000/- each stand confirmed. No amount was awarded towards “Loss of Love and Affection”. Therefore, a sum of Rs.1,60,000/- is awarded towards “Loss of Love and Affection” as it is akin to “Loss of Consortium” awarded for loss of spouse. In all, a sum of Rs.15,50,800/- is awarded as compensation to the claimants in respect of deceased E. Indhumathi. The rate of interest awarded by the Tribunal @ 7.5% per annum stands confirmed.

6. Out of the said compensation of Rs.15,50,800/-, 1st and 2nd appellants in C.M.A. No. 3036 of 2018 would be entitled to 30% each and 3rd and 4th appellants would be entitled to 20% each.

7. As far as the compensation awarded for the death of S. Elavarasan is concerned, which is the subject matter of C.M.A. No. 3038 of 2018, the Tribunal fixed Rs.10,000/- as monthly income in the absence of any proof regarding the same. However, it is evident from the records that the deceased was a driver as proved by Ex.P12. Therefore, determination of Rs.10,000/- as monthly income is too low. In the light of the judgment of the Honourable Apex Court in Syed Sadiq and Others V. Divisional Manager, United India Insurance Company Limited reported in 2014(1) TN MAC 459 (SC) and considering the fact that the deceased was owning a car as proved by Ex.P13 and his status as a driver as evident from Ex.P12, the monthly income is re-determined as Rs.15,000/-. As the deceased S. Elavarasan was aged about 27 years, 40% has to be added towards "Future Prospects" which was rightly done by the Tribunal. Since his parents alone are the legal

heirs/dependants, the Tribunal rightly deducted 50% towards "Personal Expenses" and adopted multiplier 17 for the age of 27 years in the light of judgment of the Honourable Apex Court in Smt. Sarla Verma & Others V. Delhi Transport Corporation and Another reported in (2009) 4 MLJ (SC) 997. Now, taking the re-determined monthly income of Rs.15,000/- and applying the above, "Loss of Dependency" is arrived at as hereunder:

Monthly Income :: Rs.15,000/-

ADD: Future Prospects at 40% :: Rs.15,000/- (+) 40% (Rs.15,000/-)

:: Rs.21,000/-

LESS:Personal Expenses at 50% :: Rs.21,000/- (-) 50% (Rs.21,000/-)

:: Rs.21,000/- (-) Rs.10,500/-

Monthly Contribution :: Rs.10,500/-

Annual Contribution :: Rs.10,500 x 12

Applying multiplier 17,

Loss of Dependency :: Rs.10,500 x 12 x 17

:: Rs.21,42,000/-

The amounts awarded towards "Loss of Estate" and "Funeral Expenses" @ Rs.15,000/- each stand confirmed. Since no amount was awarded towards "Loss of Love and Affection", a sum of Rs.40,000/- is awarded. Therefore, the total compensation payable to the appellants in C.M.A. No. 3038 of 2018 is Rs.22,12,000/-. The rate of interest awarded by the Tribunal @ 7.5% per annum stands confirmed.

8. Since parents of the deceased Elavarasan are the claimants, the compensation amount shall be shared equally.

9. Additional court-fee, if any, shall be paid by the respective claimants in each of the appeals for the enhanced amount within a period of two weeks from the date of receipt of a copy of this order. If the requisite court-fee is not paid by the claimants, the Tribunal is directed to deduct the requisite court fee from the respective compensation amounts awarded to the claimants in each of the appeals , as per the ratio fixed by this Court and thereafter, transfer the remaining award amount to the respective claimants' accounts.

10. The Insurance Company is directed to deposit the entire award amounts, in respect of each of the appeals, as per the modified award passed by this Court, with interest and costs, before the Tribunal, after deducting the amount, already deposited, if any, within a period of six weeks from the date of receipt of a copy of this order. On such deposits being made, the Tribunal is directed to transfer the respective shares of the respective claimants in the respective appeals, as per the ratio fixed by this Court, to their Bank account through RTGS within a period of one week thereafter.

11. In the result, both the appeals are partly allowed enhancing the compensation amounts awarded by the Tribunal in respect of M.C.O.P. Nos. 5470/2016 & 5471/2016 from Rs.10,12,800/- to Rs.15,50,800/- (C.M.A. No. 3036/2018) and from Rs.14,58,000/- to Rs.22,12,000/- (C.M.A.No. 3038/2018 respectively. No costs.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

nv

To
The Special Judge,
The MACT (Spl. Sub Court No.2), Chennai.

+1cc to Mr.R.Mohan Babu, Advocate SR.No.59849

+1cc to Mr.D. Baskaran, Advocate SR.No.59441

C.M.A. Nos. 3036 & 3038 of 2018

VG I(CO)
GMY(29/11/2019)