BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.02.2019

CORAM:

THE HONOURABLE **MRS.JUSTICE S.RAMATHILAGAM**

C.M.A.(MD)No.38 of 2019

1.Jothi
2.Minor Mahadevi
3.Sanjeevi
4.Aandal ... Appellants

(The second appellant is represented by the Guardian and Mother, 1st appellant)

Vs.

1. Vadivel

2. The Branch Manager,
United India Insurance Company Limited,
No.146/N, II Floor,
Kumar Complex, Annasalai,
Tiruchencode,
Namakkal District. ... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, 1988, against the judgment and decree, dated 14.02.2018 made in M.C.O.P.No.351 of 2015 on the file of the Motor Accidents Claims Tribunal-cum-Additional District Court, Pudukottai.

For Appellants : Mr.R.Devaraj

For R2 : Mr.A.S.Mathialagan

JUDGMENT

This Civil Miscellaneous Appeal is filed against the judgment and decree made in M.C.O.P.No.351 of 2015 on the file of the Motor Accidents Claims Tribunal-cum-Additional District Court, Pudukottai.

2.The appellants have preferred a claim petition in M.C.O.P.No.351 of 2015 claiming for a sum of Rs.30,00,000/- as compensation. The second respondent/Insurance Company has also filed counter affidavit denying the mode of accident and also the sum claimed by the claimants, as excessive one. The Tribunal, after analysing the evidence on record, has fixed the liability on the second respondent/Insurance Company and awarded a sum of Rs.11,42,200/- with interest at 7.5% per annum. Aggrieved by the same, the above appeal has been filed by the claimants.

3.In the grounds of appeal, the claimants/appellants have stated that the deceased at the time of accident was working as a Turner in a Lathe Workshop and earning a sum of Rs.25,000/- per month, whereas, the Tribunal has determined the sum at Rs.4,500/-, which is very meager. It is also the grievance of the appellants that the Tribunal has not considered the minimum income that has been considered in several judgments by the Honourable Supreme Court. Hence, the claimants have preferred this appeal for enhancing the award passed by the Tribunal.

4.Heard the learned Counsel appearing for the appellants and the learned Counsel appearing for the second respondent/Insurance Company.

5.It is contended by the learned Counsel for the appellants that the deceased was working as a Turner in a Lathe Workshop and he was earning a sum of Rs.25,000/- per month. It is also observed from the postmortem certificate that the age of the deceased at the time of accident was 35 years. It is the grievance of the appellants that when the deceased age was 35 years and he was also earning a sum of Rs.25,000/- per month, the monthly income determined by the Tribunal at Rs.4,500/- is very much on the lower side. In this regard, the learned Counsel for the appellants relied upon a judgment of the Honourable Supreme Court in ***Syed Sadiq, etc., vs Divisional Manager, United India Insurance Company Limited***, reported in ***2014 (1) TN MAC 459 (SC)***, wherein, it has been held as follows:

> *"Income-Fixation of - Injured / Claimant, a Vegetable Vendor, aged 24 years, earning Rs.10,000 p.m., as per claim - In absence of any document to substantiate claim of income, High Court fixing income at Rs.3,500 p.m. - If, proper - A labour, involved in unorganized sector doing own business, cannot be expected to produce documents to prove his monthly income - No reason for Tribunal and High Court to ask for evidence of monthly income - Considering present day economy and rising prices in Agricultural products, held, a vegetable vendor is reasonably capable of earning Rs.6,500 p.m. - Taking income At Rs.6,500 p.m. as against Rs.3,500 and adding 50% as Future Prospects following principles in Santosh Devi, monthly income fixed by Apex Court at Rs.9,750 [6,500+50%]."*

6.On the other hand, the second respondent has vehemently contended that in the absence of any other proof for occupation and income, the Tribunal was very much reasonable in fixing the monthly income of the deceased as Rs.4,500/-.

7.On a perusal of records, it is seen that the income of the deceased was arrived at Rs.4,500/- per month, which, in my considered opinion, is unjustifiable. Though it is stated in the claim petition that the deceased was earning a sum of Rs.25,000/-, no document was produced to prove the same. The Hon'ble Supreme Court in the decision in ***Syed Sidiq***'s case (cited supra), has held that the reasonable monthly income for a labour, in an unorganized sector, having his own business, would be Rs.6,500/-. In view of the same, Rs.6,500/- is fixed as notional income.

8. The Supreme Court, in its latest verdict, in the case of ***National Insurance Company Ltd., v. Pranay Sethi and others, decided on 31.10.2017***, has held that 40% towards future prospectus is reasonable for persons below the age group 40, having their own business. Admittedly, the age of the deceased at the time of the accident was 35 years and therefore, by applying the above principle, future prospectus is fixed at 40%.

9.Considering the age of the deceased, the appropriate multiplier would be 16, as per the principle laid down in ***Sarala Verma v. Delhi Transport Corporation***. Hence, the award passed by the tribunal under the head loss of dependency needs interference and the same is modified and reads as under:

- ((Income of the deceased + future prospects) – personal expenses) is ((Rs.6,500/- + Rs.2,600/- (40%)) - Rs.2275/- (1/4)) amounts to Rs.6,825/-.
- By applying the multiplier method, it would be (Rs.6,825/- X 12 X 16) amounting to Rs.13,10,400/-.
- Therefore, the loss towards dependency is enhanced and the same is fixed at Rs.13,10,400/-, instead of Rs.9,07,200/-.

10.Other than loss of dependency, the tribunal has awarded compensation under five heads, viz., Rs.40,000/- for consortium; Rs.1,60,000/- for loss of love and affection; Rs.10,000/- for loss of estate; Rs.10,000/- for ambulance; and Rs.15,000/- for Funeral Expenses, totalling a sum of Rs.2,35,000/-. These are all nothing but compensation on conventional heads. The Hon'ble Supreme Court, in the case of ***National Insurance Company Ltd., v. Pranay Sethi and others, decided on 31.10.2017*** (cited supra), has categorically held that the loss towards conventional heads should be Rs.70,000/- and following the same, this Court is inclined to award a sum of Rs.70,000/- towards conventional heads. Accordingly, a sum of Rs.70,000/- is ordered towards conventional heads and all the heads, other than loss of dependency, stands deleted.

10.In view of the above, the award of the Tribunal is modified as follows:

S.No	Head	Award of the Tribunal	Award of this Court
1	Loss of dependency	Rs.9,07,200/-	Rs.13,10,400/-
2	Loss towards Conventional heads	Rs.2,35,000/-	Rs.70,000/-
Total		Rs.11,42,200/-	Rs.13,80,400/-

11.In view of the above, the Award of the Tribunal is enhanced by Rs.2,38,200/- from Rs.11,42,200/- and claimants are entitled for a sum of Rs.13,80,400/- with interest at 7.5% per annum, as compensation. The second respondent / Insurance Company is directed to deposit the entire award amount of Rs.13,80,400 as awarded by this Court with interest at the rate of 7.5% per annum, from the date of filing of M.C.O.P., till the date of realization with costs of M.C.O.P., within a period of eight weeks from the date of receipt of a copy of this order, less the amount already deposited, if any. On such deposit being made, the appellants 1, 3 and 4 are entitled to withdraw their respective share, as apportioned by the Tribunal with accrued interest. Insofar as the minor appellant's share is concerned, the same shall be deposited in anyone of the Nationalised Bank in fixed deposit. the first appellant is permitted to withdraw the interest amount, once in three months directly from the Bank, till she attains the age of majority.

12.In the result, the award dated 14.02.2018 in M.C.O.P.No.351 of 2015 on the file of the Motor Accidents Claims Tribunal-cum-Additional District Court, Pudukottai, is hereby modified and the Civil Miscellaneous Appeal is partly allowed. No costs.

Sd/-

Assistant Registrar (P&A)

// True Copy //

Sub Assistant Registrar(CS)

To

The Motor Accidents Claims Tribunal-
cum-Additional District Court, Pudukottai.

Copy to:
The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.(2 copies)

+1 CC to Mr.A.S.MATHIALAGAN, Advocate (SR-45063[F] dated 05/02/2019)

+1 CC to Mr.N.KAMESH, Advocate (SR-45226[F] dated 06/02/2019)

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05.02.2019

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