BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.07.2019

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD).No.1307 of 2016

1.Radha

2.Minor Vaishnavi

3.Minor Rakesh

4.Kodilinga Nadar

5.Valliammal ... Appellants/ Claimants

(The minor 2nd and 3rd respondents are represented by their mother and next guardian the 1st appellant herein)

Vs.

1.Seethai

2.United India Insurance Company Ltd.,
through its Branch Manager,
Xavier Building,
II Floor, P.W.D. Road,
P.B. No.50, Nagercoil. ... Respondents/ Respondents

PRAYER:- Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award, dated 09.01.2012, passed in M.C.O.P.No.798 of 2011 by the Motor Accident Claims Tribunal / Fast Track Court No.II, Tirunelveli.

For appellant : Mr.T.Selvakumaran

For 1st respondent : No appearance

For 2nd respondent : Mr.Ilango

JUDGMENT

It is a case of fatal. The manner of the accident is not in dispute. The claimants are wife, daughter, son, father and mother of the deceased by name Mahesh Kumar. The Tribunal has awarded a sum of Rs.10,000/- towards funeral expenses, Rs.50,000/- towards consortium and loss of love and affection and Rs.5,80,000/- towards loss of income and loss of estate, totalling a sum of Rs.6,40,500/- as compensation, with 8% interest per annum from the date of petition till the date of realization. The Tribunal has directed the second respondent / Insurance Company to deposit the entire compensation. The appellants / claimants have filed this appeal seeking to enhance the compensation.

2. The learned counsel appearing for the appellants / claimants would submit that before the accident, the deceased was running a workshop and earning a sum of Rs.20,000/- p.m. But, the Tribunal has taken only Rs.4,000/- p.m. as the notional income of the deceased and it is on the lower side. By relying upon the decision of the Hon'ble Supreme Court in Syed Sadiq and others Vs. Divisional Manager, United India Insurance Company Limited, reported in 2014 ACJ 627, the learned counsel for the appellants / claimants requested this Court to fix a sum of Rs.6,500/- p.m. as the notional income of the deceased. He would further submit that future prospects has not been added in the monthly income of the deceased. Thus, he prayed to enhance the award amount by fixing the notional income of the deceased as Rs.6,500/- p.m. and adding future prospects 40% in the monthly income of the deceased. He would further submit that in addition to the head of loss of income, the Tribunal has awarded Rs.50,000/- towards loss of consortium and loss of love and affection and Rs.10,000 towards funeral expenses. In lieu of the above heads, as per the decision reported in 2017 (2) TN MAC 609 (SC) (National Insurance Company Limited Vs. Pranay Sethi and others), a sum of Rs.70,000/- may be awarded towards conventional head. Thus, he prayed to enhance the award amount.

3. The learned counsel appearing for the second respondent / Insurance Company would submit that since the claimants have not produced any document in order to substantiate their claim that the deceased was earning a sum of Rs.20,000/- p.m., the Tribunal has rightly fixed Rs.4,000/- p.m. as the notional income of the deceased and therefore, the same need not be interfered with. Thus, he prayed to dismiss this appeal.

4. Heard the learned counsel appearing for the parties and perused the records carefully.

5. The accident is of the year 2011. The age of the deceased at the time of the accident was 27 years. According to the claimants, the deceased was earning a sum of Rs.20,000/- p.m. But, no document produced on the side of the claimants in order to prove the income. In the decision of Syed Sadiq, cited supra, the Hon'ble Supreme Court, keeping in mind the escalation of prices, has fixed a sum of Rs.6,500/- p.m. as notional income of a vegetable vendor, even in the absence of documentary evidence to prove the income. In view of the above and also considering the age of the deceased, year of the

accident, avocation of the deceased and number of claimants, this Court is inclined to fix Rs.6,500/- as the notional monthly income of the deceased. As per the decision reported in 2017 (2) TN MAC 609 (SC) (National Insurance Company Limited Vs. Pranay Sethi and others), considering the age of the deceased, if 40% of future prospects is added with the notional income of the deceased ie., Rs.2600/- (6500 x 40/100 = 2600), the monthly income of the deceased comes to Rs.9,100/- (6500 + 2600 = 9100).

6. It is seen that the Tribunal has deducted 1/3rd amount towards personal expenses. Considering the number of claimants and also considering Pranay Sethi case, cited supra, this Court is inclined to deduct 1/4th amount towards personal expenses. If 1/4th amount is deducted from the monthly income of the deceased, the monthly loss of income comes to Rs.6825/- (9100 - 2275 = 6825) and the annual loss of income comes to Rs.81,900/- (6825 x 12 = 81900). If multiplier No.17 is adopted as per the decision reported in 2009 (2) TN MAC 1 (SC) (Sarla Verma and others Vs. Delhi Transport Corporation and another), and multiplied with the annual loss of income of Rs.81,900/-, the total loss of income comes to Rs.13,92,300/- (81900 x 17 = 13,92,300). It is seen that though the Tribunal has adopted the multiplier method and arrived at loss of income, it has erroneously awarded compensation under two heads ie., loss of income as well as loss of estate and therefore, the head of loss of estate is segregated. Thus, Rs.13,92,300/- is awarded towards loss of income.

7. So far as the other heads are concerned, it is seen that the Tribunal has awarded Rs.50,000/- towards loss of consortium and loss of love and affection and Rs.10,000 towards funeral expenses. Instead the award passed under the above heads, this Court is inclined to award Rs.70,000/- on conventional heads, as per the Pranay Sethi case, cited supra. In other respects, the award passed by Tribunal is confirmed. Thus, the total compensation comes to Rs.14,62,300/-.

8. In view of the above, the award is enhanced from Rs.6,40,000/- to Rs.14,62,300/-. The second respondent / Insurance company is directed to deposit the amount now awarded with 8% interest p.a. from the date of petition till the date of deposit, less the amount already deposited, with accrued interest and costs, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the major claimants are permitted to withdraw the amount awarded with accrued interest and costs, as apportioned by the Tribunal, by filing an application before the Tribunal. So far as the share of the minors are concerned, the same shall be deposited in a nationalised bank till they attain majority and the first appellant / first claimant being mother and natural guardian of the minor claimants is permitted to withdraw the interest accrued in the deposit once in three months. The claimants are directed to pay the Court fee, if any to be payable, within a period of four weeks from the date of receipt of a copy of this

judgment.

9. This Civil Miscellaneous Appeal is accordingly allowed. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

To
The Additional District Judge cum FTC No.II,
Motor Accident Claims Tribunal,
Tirunelveli.

Copy to:
The Record Keeper, (2 Copies)
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.T.SELVAKUMARAN, Advocate (SR-72636[F] dated 02/07/2019)

+1 CC to M/s.A.ILANGO, Advocate (SR-72783[F] dated 02/07/2019)

C.M.A(MD).No.1307 of 2016
01.07.2019

gcg
JMN(22.08.2019) 4P : 6C