BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **02.07.2019**

CORAM

THE HONOURABLE MRS.JUSTICE **J.NISHA BANU**

C.M.A(MD)No.223 of 2018
and
C.M.P(MD)No.3397 of 2018

The Divisional Manager,
United India Insurance Company Limited,
Tenkasi. .. Appellant/3rd Respondent

Vs.

1.Shanmugathai

2.Madasamy

3.Chellathai .. Respondents 1 to 3 / Claimants

4.Murugesan .. 4th Respondent / 1st Respondent

5.Thirumalaikumar .. 5th Respondent / 2nd Respondent

(R4 & R5 remained *ex parte* before the Tribunal and hence, notice is dispensed with in respect of R4 & R5)

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award, dated 10.08.2017, passed in M.C.O.P.No.26 of 2017 by the Motor Accident Claims Tribunal / Additional District Court, Tenkasi.

For Appellant : Mr.J.S.Murali

For Respondents 1 to 3 : Mr.N.Shankar Ganesh

JUDGMENT

It is a case of fatal. The manner of the accident is not in dispute. The Tribunal has awarded a sum of Rs.18,36,000/- towards loss of dependency, Rs.10,000/- towards loss of estate, Rs.75,000/- towards loss of love and affection and Rs.25,000/- towards funeral and transportation expenses, totally Rs.19,46,000/- as compensation. The Tribunal has directed the appellant / Insurance Company to pay the entire compensation amount with 9% interest per annum from the date of petition till the date of realization. The appellant / Insurance Company has filed this appeal questioning the quantum of compensation.

2.The learned counsel appearing for the appellant / Insurance Company would submit that though the appellant / Insurance Company specifically denied the avocation of the deceased in the counter and no evidence was let in on the side of the claimants with regard to the income of the deceased, the Tribunal has fixed the notional monthly income of the deceased as Rs.12,000/-, which is on the higher side. Though the Tribunal came to a conclusion that the deceased is aged about 29 years at the time of accident, has erroneously added 50% towards future prospects instead of 40%. Thus, he prayed to reduce the award amount.

3.The learned counsel appearing for the respondents 1 to 3 / claimants would submit that the deceased was working as a Photographer at the time of accident. The Tribunal based on the prevailing economic scenario at the time of accident in the locality, has notionally fixed the income of the deceased as Rs.400/- per day and accordingly fixed Rs.12,000/- per month, which is not on the higher side. The Tribunal has only awarded Rs.25,000/- for each of the claimants, totally Rs.75,000/- towards loss of love and affection and Rs.25,000/- towards funeral and transportation expenses, which are on the lower side. Thus, he prayed to dismiss the appeal.

4.Heard the learned counsel appearing for the appellant / Insurance Company and the learned counsel appearing for the respondents 1 to 3 / claimants and also perused the records carefully.

5.The date of accident is on 24.12.2012. It is not in dispute that the deceased was aged about 29 years at the time of accident. It has been stated on the side of the claimants that the deceased was a B.Com. Graduate and he was stated to have been earning about Rs.30,000/- per month as Photographer. But, no proof has been filed to substantiate the same. The Tribunal has fixed the notional monthly income of the deceased as Rs.12,000/-. In the decision of **Syed Sadiq and others Vs. Divisional Manager, United India Insurance Company Limited**, reported in **2014 ACJ 627**, the Hon'ble Supreme Court, keeping in mind the escalation of prices, has fixed a sum of Rs.6,500/- as notional monthly 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 monthly income of the deceased i.e., Rs.2,600/- [6500 x 40/100 = 2600], the monthly income of the deceased comes to Rs.9,100/- [6500 + 2600 = 9100] and accordingly, the annual income comes to Rs.1,09,200/- [9100 x 12 = 1,09,200]. As the deceased was a bachelor, considering the number of dependants, if 50% of the amount towards personal expenses is deducted, the annual loss of income comes to Rs.54,600/- [1,09,200 x 50/100 = 54,600]. 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.54,600/-, the total loss of income comes to Rs.9,28,200/- [54,600 x 17 = 9,28,200].

6.The Tribunal has awarded only Rs.75,000/- towards loss of love and affection. Considering the number of claimants and also considering the relationship between the claimants and the deceased, this Court is inclined to award Rs.1,50,000/- towards loss of love and affection. In other respects, the award passed by Tribunal is confirmed. Thus, the total compensation is reduced from Rs.19,46,000/- to Rs.11,13,200/-.

7.It is seen that the Tribunal has awarded 9% interest per annum, instead of 7.5%, which is in the usual course, being awarded by the Tribunal, considering the prevailing rate of interest. Hence, the rate of interest is reduced from 9% to 7.5% per annum.

8.In view of the above, the award passed by the Tribunal is reduced from 19,46,000/- to Rs.11,13,200/- with 7.5% interest per annum from the date of petition till the date of deposit. The appellant / Insurance Company is directed to deposit the entire award amount ie., Rs.11,13,200/-, 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 being made, the claimants are permitted to withdraw their respective shares with accrued interest and costs, as apportioned by the Tribunal, less the amount already withdrawn, by filing an application before the Tribunal.

9.This Civil Miscellaneous Appeal is, accordingly, partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

Sub Assistant Registrar(CS)

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To

1.The Motor Accident Claims Tribunal,
Additional District Court, Tenkasi.

COPY TO
The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai. (2 COPIES)

+1CC TO MR.J.S.MURALI, Advocate Sr. No. 73323

JUDGMENT MADE IN
C.M.A(MD)No.223 of 2018

PM(CO)
TR (28.08.2019) 4P 5C