BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : **31.10.2019**
CORAM:
THE HONOURABLE MR.JUSTICE **KRISHNAN RAMASAMY**
CMA(MD)No.572 of 2017

1. Kalarani
2. Minor S.Tharaneeshwaran
3. S.Rasammal
4. S.Shanmugasundaram ... Appellants/Petitioners

(2nd appellant is represented by his mother 1st appellant)

versus

1. A.Usharani
2. The Branch Manager,
   The Oriental Insurance Co. Ltd.,
   11/12/30, D.S.P.Complex,
   Karur Main Road,
   EC Velayuthampalayam,
   Karur. ... Respondents/Respondents

(1st respondent remained ex parte before the Tribunal)

Appeal filed under Section 173 of Motor Vehicles Act, against the Judgment and Decree dated 21.07.2016 made in M.C.O.P.No.425 of 2012 on the file of the Motor Accident Claims Tribunal (Principal District Judge), Karur.

For Appellants : M/s.N.Sudhagar Nagaraj
For R2 : Mr.K.Bhaskaran

JUDGMENT

One Kishore Kumar, aged about 30 years, a Supervisor under one P.Thiruppathi, who is a contractor of TWAD Board, Karur and an agriculturist and earning a sum of Rs.16,000/- p.m. from the employment and Rs.2,000/- p.m. from his agricultural work, met with an accident on 04.09.2012 and sustained fatal injuries. Hence, the legal heirs of the deceased filed a petition in M.C.O.P.No.425 of 2012 on the file of the Motor Accident Claims Tribunal (Principal District Judge), Karur, claiming compensation of Rs.40,00,000/-. The Tribunal, after considering the oral and documentary evidence, has awarded a sum of Rs.9,34,000/- as compensation along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit. Stating that the compensation awarded by the Tribunal is very meager, the claimants have filed the present appeal.

2. The learned counsel appearing for the appellants submitted that though the claimants filed a salary certificate and marked the same as Ex.P8, the Tribunal has refused to accept the said salary certificate and fixed the income of the deceased at Rs.6,000/- p.m. According to the appellant, the deceased was working as a Supervisor under one P.Thiruppathi, who is a contractor of TWAD Board, Karur. However, the Tribunal has not given any credence to the evidence of P.W.3 and Ex.P8 and Ex.P10 and fixed the notional income of the deceased at Rs.6,000/-. The Hon'ble Apex Court, in the case of ***Syed Sadiq etc. vs. Divisional Manager, United India Insurance Company*** (reported in ***2014 (2) SCC 735***), fixed the notional income for a Vegetable Vendor at Rs.6,500/- for the accident, that had occurred in the year 2008. In the present case, the accident had happened in the year 2012. The Tribunal, by applying the principles laid down by the Hon'ble Apex Court in the Syed Sadiq's case and also considering the fact that the cost of living has been increasing day-by-day, ought to have fixed the income of deceased atleast at Rs.9270/-. But, the Tribunal fixed a sum of Rs.6,000/-, which is very low and the same has to be enhanced.

3. Per contra, the learned counsel appearing for the second respondent strongly opposed for fixing the notional income as stated by the learned counsel appearing for the appellants. However, he fairly agreed for fixing the notional income of Rs.7500/- as notional income. This Court also is of the view that fixing a sum of Rs.7500/- is just and fair.

4. Therefore, this Court is inclined to fix the notional income of the deceased at Rs.7,500/-. Accordingly, the notional income of the deceased is fixed at Rs.7,500/- p.m.

5. The Tribunal has not awarded any amount towards future prospects while determining compensation towards loss of dependency. As held in ***National Insurance Company Limited vs. Pranay Sethi and others*** reported in ***AIR 2017 SC 5157***, the Tribunal ought to have added 40% towards the future prospects. Following the dictum laid down in ***Pranay Sethi's*** case, 40% is added towards future prospects.

6. At the time of accident, the deceased was aged about 30 years. As per the decision of the Hon'ble Apex Court in the case of ***Sarala Verma and others vs. Delhi Transport Corporation and another*** reported in ***2009 (6) SCC 121***, the correct multiplier to be adopted is 17. Following the same, the Tribunal has added the correct multiplier of 17 and also considering the number of family members, correctly deducted $1/4^{th}$ amount towards personal expenses of the deceased. Accordingly, the loss of income of the deceased would be at Rs.16,06,500/- (Rs.7500 x 12 + 40% - $1/4^{th}$ x 17), which is revised from Rs.9,18,000/- awarded by the Tribunal.

7. The Court below has awarded a sum of Rs.25,000/- towards loss of consortium. As held by the Hon'ble Apex Court in ***Pranay Sethi's*** case (cited above), the amount awarded towards loss of consortium is very low and the same has to be revised. Hence, the amount awarded towards loss of consortium is revised to Rs.40,000/-.

8. The Court below awarded a sum of Rs.15,000/- towards funeral expenses, which is very reasonable and therefore, the same is hereby confirmed.

9. But, the Court below has not awarded any amount towards loss of estate. Following the ratio laid down by the Hon'ble Apex Court in ***Pranay Sethi's*** case (cited supra), this Court is inclined to award a sum of Rs.15,000/- towards loss of estate. Accordingly, a sum of Rs.15,000/- is awarded towards loss of estate.

10. The Tribunal has awarded a sum of Rs.40,000/- towards loss of love and affection for the minor child, mother and father of the deceased, which is very low. Therefore, this Court is inclined to award a sum of Rs.50,000/- to the minor children and Rs.20,000/- each to the father and mother of the deceased.

11. The Tribunal has not awarded any amount towards transport expenses. Considering the facts and circumstances of the case, this Court is inclined to award a sum of Rs.10,000/- towards transport expenses. Accordingly, a sum of Rs.10,000/- is awarded towards transport expenses.

12. The award passed by the Tribunal is enhanced and the break-up details of the modified award amount read as follows:

Loss of dependency	-	Rs.	16,06,500/-
Loss of consortium	-	Rs.	40,000/-
Funeral expenses	-	Rs.	15,000/-
Loss of estate	-	Rs.	15,000/-
Loss of love and affection to minor 2nd claimant	-	Rs.	50,000/-
Loss of love and affection to 3rd and 4th claimants	-	Rs.	40,000/-
Transport expenses	-	Rs.	10,000/-
Total	-	Rs.	17,76,500/-

13. In the result, the Civil Miscellaneous Appeal is allowed, modifying the award amount from Rs.9,98,000/- to Rs.17,76,500/-, which is payable by the Insurance Company along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit.

14. The Insurance Company is directed to deposit the modified award amount of Rs.17,76,500/- along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit, less the amount already deposited if any, within a period of eight weeks from the date of receipt of a copy of the Judgment. On such deposit being made, the Tribunal shall transfer the respective share of the major claimants (as per the apportionment in in M.C.O.P.No.425 of 2012) directly to their Bank Account through RTGS, within a period of three weeks thereafter. The share of the minor claimant shall be deposited in a Fixed Deposit in any one of the Nationalized Banks till he attains majority and the interest accrued thereon shall be withdrawn by his mother once in three months. The claimants shall pay the court fee for the enhanced amount of compensation, before obtaining copy of Judgment. No costs.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

The Motor Accident Claims Tribunal
(Principal District Judge),
Karur.

Copy to

The Section Officer, VR Section,
Madurai Bench of Madras High Court, Madurai (2 copies)

+1 CC to Mr.N.SUDHAGAR NAGARAJ, Advocate (SR-95534[F] dated 01/11/2019)

+1 CC to Mr.K. BHASKARAN, Advocate (SR-95608[F] dated 01/11/2019)

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VB(28.02.2020) 4P 6C