IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.07.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.1558 of 2013

(Through Video Conferencing)

1.Kasthuri

2.Vanaja ...Petitioners / Appellants

Vs.

1.Duraikannu

2.United India Insurance Co. Ltd.,
No.58, Purasaiwakkam, High Road,
Madras - 7. ...Respondents /Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 29.07.2011 and made in M.A.C.T.O.P.No.3377 of 2007, on the file of the Motor Accident Claims Tribunal and Chief Judge Small Causes, Chennai.

For Appellant : Mr.F.Terry Chellaraja
For R2 : M/s.K.Saraswathy
R1 : Exparte

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against impugned Judgment and Decree dated 29.07.2011, passed by the Motor Accidents Claims Tribunal, (Court of Small Causes, Chennai), Chennai in M.C.O.P.No.3377 of 2007.

2. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.4,40,000/- together with interest at 7.5% per annum from the date of the claim petition till the date of deposit excluding the period between 08.07.2009 to 20.04.2010, to the 1st appellant/1st claimant only.

3. While awarding the above compensation to the 1st appellant/1st claimant, the claim of the 2nd appellant/2nd claimant

was dismissed on the ground that she is not a dependent and the legal heir of the deceased Ashok Kumar.

4. That apart, the award has been challenged in this Civil Miscellaneous Appeal on the ground that the income of the deceased was wrongly adopted as Rs.5,000/- per month even though the evidence on record showed that the deceased was earning a sum of Rs.10,000/- per month. In this connection, reference was made to the deposition of PW2 who has stated that deceased received a sum of Rs.7,000/- per month for sale of news paper.

5. According to the appellants/claimants, the deceased was qualified person and aged about 25 years. He was not only engaged in supplying news papers but also engaged in decoration on vegetables and fruits and was therefore earning additional income separately. That apart, the impugned Judgment and Decree also challenged in this appeal on the ground that the deceased was aged 25 years and therefore the Tribunal ought to have adopted 17 multiplier instead of 14.

6. It is further submitted that as per the decision of the Hon’ble Supreme Court in National Insurance Company Limited Vs. Pranay Sethi and Others, (2017) 16 SCC 680, the appellants were entitled for future prospectus. Therefore, the future prospects ought to have awarded at 40% of the amount.

7. Per contra, the learned counsel for the 2nd respondent submits that the impugned order is well reasoned and requires no interference except regarding the multiplier and the future prospects. She therefore submits that the compensation may be partially enhanced. She further submits that in absence of any evidence to show an income of Rs.10,000/- per month of the deceased, there cannot be any variation in the income of deceased. She therefore submits that the Tribunal has correctly arrived at the income of the deceased as Rs.5,000/- per month.

8. I have considered the arguments advanced by the learned counsel for the appellants and the 2nd respondent.

9. The Tribunal has determined the income of the deceased as Rs.5,000/- as against the claim of the appellants that the deceased was earning a sum of Rs.10,000/- per month. It is noticed that as per the decision of the Hon’ble Supreme Court in Syed Sadiq Vs. United India Insurance Co.Ltd., (2014) 2 SCC 735, wherein, the Court has considered the nominal income of a vegetable vendor as Rs.6,500/- per month in the year 2008. The accident said to have taken place in the year 2007. Therefore, in absence of direct evidence to show that the deceased was earning a sum of Rs.10,000/-, I am also inclined to adopt the income of the deceased as Rs.6,500/- per month.

10. The Tribunal has applied the wrong multiplier of 14 instead of 17 as the age of the deceased was only 26 years at the time of death. The deduction also has to be recomputed as the appellants/claimants were dependents of the deceased. As per the decision of the Hon'ble Supreme Court in National Insurance Company Limited Vs. Pranay Sethi and Others, (2017) 16 SCC 680, 40% is to be added towards future prospects.

11. The Tribunal has also deducted the 1/2nd of the income for the personal expenses of the deceased. However, it is noticed that the 1st appellant/1st claimant is the mother and the 2nd appellant/2nd claimant is the unmarried sister of the deceased who was aged about 24 years at the time of accident. Therefore, the 2nd appellant was also dependant of the deceased. Therefore, the deduction towards the personal expenses of the deceased also ought to have been restricted to 1/3rd of the income and not 1/2nd of the income as was done by the Tribunal in terms of the decision of the Hon'ble Supreme Court in Sarla Verma (Smt) and Others Vs. Delhi Transport Corporation and Another, (2009) 6 SCC 121, wherein, it was held as follows:-

> 31. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent(s) and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependant. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependants, because they will either be independent and earning, or married, or be dependent on the father.

12. There is no evidence to suggest that the 2n appellant was not a dependent at the time of death of the deceased

13. In the light of the above discussion, the compensation payable to the appellants is re-quantified as follows:-

Heads	Compensation awarded by the Tribunal	Compensation re-quantified by this
Loss of dependency	*Rs.4,20,000/-	#Rs.12,37,600/-
Funeral Expenses & Transportation	Rs. 10,000/-	Rs. 15,000/-
Love and affection	Rs. 10,000/-	**Rs. 50,000/-
Loss of Estate	Nil	Rs. 15,000/-
Total	Rs.4,40,000/-	Rs.13,17,600/-

Note: * 5,000 - 1/2 x 12 x 14 = 4,20,000/-
6,500 - 1/3 x 12 x 17 = 12,37,600/-
** 25,000 x 2 = 50,000/-

14. The 2nd respondent is directed to deposit the enhanced amount of compensation of Rs.8,77,600/- (Rs.13,17,600 - Rs.4,40,000) together with interest at 7.5% from the date of filing of the claim petition till the date of deposit and also deposit the compensation that was awarded by the Tribunal, less already deposited if any, together with interest as was ordered by the Tribunal, within a period of six weeks from the date of receipt of a copy of this Judgment.

15. As the compensation is enhanced, the appellants shall pay the deficit court fee, within a period of two weeks from the date of receipt of a copy of this Judgment.

16. Since the 2nd appellant/2nd claimant was also dependent of the deceased at the time of the death, on such deposit of compensation, the appellants are entitled to withdraw the same together with interest equally, less the amount already withdrawn if any, by filing suitable application before the Tribunal.

17. This Civil Miscellaneous Appeal stands partly allowed accordingly. No cost.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

jen

To:-

The Motor Accident Claims Tribunal
and Chief Judge Small Causes, Chennai.

Copy to:
The Section Officer,
VR Section, High Court Madras.

C.M.A.No.1558 of 2013

RSI(CO)
RMP(10/03/2021)