IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.07.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.1753 of 2013

(Through Video Conferencing)

1.Sellammal

2.V.M.Subramani ... Appellants/Petitioners

Vs.

K.Dhanaraj (Died).

1.M/s.The National Insurance Company Ltd.,
74 A, Paramathi Road, Namakkal District.

2.Sasikala

3.Minor Sanjay

4.Minor Hardeep
(Minors are represented by their Guardian
P.Jeevabharathi, Advocate, Namakkal.)
... Respondents/Respondents

(The 2nd to 4th respondents were set exparte before the Tribunal)

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 29.10.2011 and made in M.C.O.P.No.1507 of 2004 on the file of MACT/ Principal District Court at Namakkal.

For Appellants : Mr.Lokesh for
Mr.Ma.P.Thangavel

For R1 : Mr.S.Vadivel

RR2 to 4 : Set Exparte

J U D G M E N T

The claimants are the appellants in this Civil Miscellaneous Appeal and are aggrieved by the impugned Judgment and Decree dated 29.10.2011 passed by the Motor Accident Claims Tribunal/Principal District Court, Namakkal, in M.C.O.P.No.1507 of 2004.

2. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.3,50,000/- together with interest at 7.5% per annum from the date of filing of the claim petition till the date of realisation to the appellants/claimants. Aggrieved by the compensation awarded by the Tribunal, the appellants/claimants have filed this appeal for enhancement of compensation.

3. The appellants/claimants are the wife and the son of the deceased Marappan who aged about 50 years at the time of death. In the claim petition, the appellants/claimants had declared the age of the deceased as 50 years and the income of the deceased as Rs.5,000/- per month. As per the claim statement, the deceased was an agriculturist who met with an accident whileriding a TVS 50 moped bearing registration No.TN-28-8592, when a Tractor bearing registration No. TN-28-H-4488 insured with the 1st respondent Insurance Company driven by its driver in a rash and negligent manner, hit the deceased, as a result of which, the deceased was thrown out from the TVS 50 moped and suffered grievous on his head and died on the way to hospital. The owner of the Tractor when the claim petition was filed.

4. Before the Tribunal, the 1st respondent Insurance Company filed counter distancing itself from liability on several grounds. The Tribunal, after examining the evidence on records and the documents filed, awarded a sum of Rs.3,50,000/- as compensation to the appellants/claimants.

5. In this appeal, the appellants/claimants have asked for enhancement of compensation as the compensation was arrived by the Tribunal by taking the notional income of deceased as Rs.3,000/- per month as against the income of Rs.5,000/- as declared by the appellants/claimants. Though there are no records to substantiate that the deceased was earning a sum of Rs.5,000/- per month, I am of the considered view that the income of deceased of Rs.3,000/- per month appears to be low even though the deceased was an agriculturist. Considering the fact that the deceased was an agriculturist and had two dependents, namely, the wife and son, the notional income of the deceased can be partially enhanced to Rs.3,500/- per month for the purpose of awarding compensation.

6. Since the Tribunal has not added the future prospects while calculating the compensation, it is also to be added at 25% of the aforesaid notional income of the deceased considering the age and avocation 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.

7. Under these circumstances, the compensation awarded towards loss of income of the deceased is re-quantified by adding future prospects at 25%. The calculation of the loss of income as follows:-

Income fixed by this Court	Rs.3,500/-	
Less: Personal Expenses at 1/3rd (3,500 x 1/3rd)	Rs.1,166/-	Rs.2,334/-
Add: Future Prospectus 25% (2,334 x 25%)	Rs. 875/-	Rs.3,209/-
Annual Income – (3,209 x 12)		Rs.38,508/-
Multiplier – 13 (38,508 x 13)		Rs.5,00,604/-

Thus, the Loss of Income of the deceased is fixed as Rs.5,00,604/- for calculating the compensation.

8. The Hon'ble Supreme Court in M.H.Uma Maheshwari and Others Vs. United India Insurance Company Limited and Another, reported in 2020 SCC OnLine 505, has held as follows:-

> 8.The Tribunal, by recording a finding that the deceased was in the age group of 40 to 50 years, applied the multiplier of 13 while calculating the compensation. The High Court, curiously while maintaining the multiplier of 13 as per the judgment of this Court in the case of Sarla Verma (Smt) and Others Vs. Delhi Transport Corporation and Another, (2009) 6 SCC 12, has reduced the compensation only on the ground that the deceased was aged 50 years 3 months on the date of the accident, as such the compensation is to be calculated on account of loss of dependency by granting future prospects at 15% but not 30%. So far as the application of multiplier of 13 by the Tribunal is concerned, the High Court has not interfered with the same. When the age of the deceased was considered in the group of 40 to 50 years, we are of the view that the High Court has committed error in granting only 15% towards future prospects instead of 30%. As per the judgments of this Court primarily the age group is to be considered. Considering the age group as 40 to 50 years, when the multiplier of 13 is maintained by the High Court, there is no reason or justification for reducing the compensation by granting 15% towards future prospects. Though the learned counsel appearing for respondent no. 1-

Insurance Company has submitted that the compensation towards future prospects was awarded as per the Constitution Bench judgment of this Court in the case of National Insurance Company Limited Vs. Pranay Sethi and Others, (2017) 16 SCC 680 but at the same time it is to be noticed that in the very same judgment in paragraph 59.3 while considering the grant of future prospects, this Court has specifically said that the addition should be 30% if the age of the deceased was in the age group of 40 to 50 years. For application of multiplier, the High Court has also accepted the age group of the deceased between 40 and 50 years. In that view of the matter, there is no reason for reducing the compensation by granting future prospects at 15% only. In absence of any challenge to the findings recorded by the High Court confirming the application of multiplier of 13, we are of the view that the High Court has committed error in reducing the compensation on account of loss of dependency. For loss of love and affection, when the compensation of Rs. 1,00,000/- on account of loss of consortium was awarded to the first appellant, she was not entitled for another Rs. 1,00,000/- towards the same but, at the same time though the appellants have claimed Rs. 2,00,000/- towards transportation of dead body and funeral expenses, only an amount of Rs. 20,000/- and Rs. 25,000/- was awarded towards the respective heads. Taking into account the facts and circumstances of the case, we are of the view that even such grant of Rs. 1,00,000/- ought not have been reduced by the High Court.

9. The compensation awarded on the other conventional heads appears to be low and is therefore modified as follows:-

Funeral Expenses	Rs.15,000/-
Loss of consortium	Rs.40,000/-
Loss of Estate	Rs.15,000/-
Loss of Love and Affection	Rs.40,000/-
Transportation	Rs.10,000/-
Total	Rs.1,20,000/-

Thus, the total amount of compensation of Rs.3,50,000/- awarded by the Tribunal is enhanced to Rs.6,20,604/- (5,00,604 + 1,20,000/-).

10. Therefore, the 1st respondent Insurance Company is directed to deposit the enhanced amount of compensation of Rs.2,70,604/- (6,20,604 – 3,50,000) together with interest at 7.5% per annum from the date of filing of the claim petition till the date of such deposit, before the Tribunal, within a period of six weeks from the date of receipt of a copy of this Judgment.

11. If the amount of compensation awarded by the Tribunal has not deposited by the 1st respondent Insurance Company, it is also directed to be deposited the same together with interest as directed by the Tribunal, less the amount already deposited if any, within the aforesaid period.

12. On the amount of compensation awarded by the Tribunal, the appellants/claimants are entitled to withdraw the same together with interest in the same proportion given in the impugned Judgment and Decree, less the amount already withdrawn if any, by filing suitable application before the Tribunal.

13. On the enhanced amount of compensation, the 1st appellant / 1st claimant is entitled to withdraw a sum of Rs.2,00,000/- together with interest thereon and the 2nd appellant/2nd claimant is entitled to withdraw a sum of Rs.70,604/- together with interest thereon, by filing suitable application before the Tribunal.

14. Accordingly, this Civil Miscellaneous Appeal is partly allowed No cost.

Sd/-
Assistant Registrar(Insp.Cell)

//True copy//

Sub Assistant Registrar

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To:

The Motor Accident Claims Tribunal
Principal District Court,
Namakkal.

C.M.A.No.1753 of 2013

PVS(CO)
GMY(20/11/2020)