IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 20.08.2020	Pronounced on: 24.08.2020

CORAM
THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.1835 of 2015
and M.P.No.1 of 2015

The Oriental Insurance Company Limited,
T.P.Claims Hub, Prakasam Road,
Chennai -1. ...Appellant

/versus/

1.R.Shakuntla,
W/o.M.R.Raghavendran,

2.R.Balaji,
S/o.M.R.Raghavendran,

3.Raja Rajeswari
D/o.M.R.Raghavendran,

No.9, 10th Street, Nanganallur,
Chennai – 61.

4.Jebastin,
No.8/3, Jayanthi Street,
Dr.Seethapathi Nagar,
Vellachery, Chennai – 42. ...Respondents

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act against the Decree and Judgment dated 31.07.2013 made in M.C.O.P.No.1889 of 2011 on the file of II Court of Small Causes, Motor Accidents Claims Tribunal, Chennai.

For Appellant : Mr.K.Vinod

For R1to R3 : Mr.G.Balaji Prasad
For R4 : No Appearance

J U D G M E N T
(The case has been heard through video conference)

This Appeal is filed by the Insurance Company against the quantum of compensation. The claimants are the wife and 2 children of the deceased Ragavendran.

2.The accident occurred on 12/01/2009 near Kadapa –Tadipatti Highways, near Obannapatti, Andhra Pradesh, while the deceased was travelling in the Chevrolet Travera Maxi Cab bearing registration No. TN 07 AQ 8942. According to the FIR - Ex P-1, the front tyre of the Travera Maxi Cab bursted due to high speed and rash driving of the Travera cab driver resulting in losing the control. Cab dashed against a stationed Trailer lorry and the deceased died on the spot. The accident was witnessed by PW-2. The Police registered the case against Travera cab driver for offence under sections 337 and 304 A IPC. Final report Ex.P-3 was filed after investigation against the driver, who is the first respondent in the claim petition. The vehicle was insured with the second respondent Insurance Company. The insurance policy is Ex P-5. Therefore, the Tribunal fixed the negligence upon the Travera cab driver.

3.The deceased was an Income Tax assessee. He served in Indian Army and retired. Besides his pension, he was earning commission through real estate business and as LIC Agent. As per his IT returns, his date of birth was 05/08/1945. Based on the IT returns (Ex P – series) and Bank Pass Book Ex P-10, the Tribunal fixed his monthly income as Rs.15,000/-. After deducting 1/3rd for his personal expenses, applying the multiplicand 7 based on his age, awarded Rs.8,40,000/- towards loss of income (Rs.10,000 x 12 x 7). For funeral expenses Rs.10,000/- for loss of companionship to the first petitioner Rs.20,000/-, for loss of love and affection to the petitioners 2 and 3, Rs.10,000/- each. Totally a sum of Rs.8,90,000/- was awarded.

4.In this appeal preferred by the Insurance Company, relying upon the judgement of the Hon'ble Supreme Court, it is contended that, the claimants have filed the Income Tax returns of the deceased. As per the returns - Ex P-7, his annual income for the year 2006-2007 was Rs.1,89,000/- and for the year 2007-2008 was Rs.1,01,290/-. For the financial year 2008-2009 he did not file returns since, his income was below the taxable limit. The deceased never had income other than what mentioned in his IT returns. For the sake of getting higher compensation, they have boosted up saying that he was carrying on real estate business and was LIC agent. Even assuming that he was LIC Agent, the bank pass book – Ex.P-10 reflects only Rs.61,000/- as credit towards LIC commission. His monthly pension was only Rs.4,627/-. Therefore, his annual income cannot be more than Rs.10,000/-. The Tribunal ignoring the income shown in the income tax return, has fixed the fundamental income as Rs.15,000/- without any evidence. Hence, it has to be reduced to Rs 10,000/-.

5.In ***United India Insurance Company Limited, having its Divisional Office, Ranipet & Others Versus Malarvizhi & Others*** reported in 2019 ACJ 1695, the Division Bench of this Court has observed as follows:-

"It is needless to mention that whatever the business assignment in which the deceased said to have engaged himself and earned money, for the purpose of computation of his income, the income tax returns filed by the deceased alone will serve as the best piece of evidence and which would truly disclose his yearly income. When the income tax returns were marked as documents, the other documents filed by the claimants to show the income of the deceased, his financial capacity or resourcefulness cannot have much significance. In other words, the income tax returns submitted by the deceased would outweigh the other documentary evidence filed by the claimants to show the income earned by the deceased. The income tax returns being a statutory document, it can be taken into account for the purpose of determining the loss of income of the deceased. Thus, the contention of the claimants that the annual income of the deceased will not be less than Rs.6 lakhs and such amount has to be taken into account for determining his loss of income cannot be countenanced besides it is contrary to the income tax returns filed by the deceased. As rightly pointed out by the learned counsel for the appellant/insurance company, the findings of the Tribunal that an individual assessee may

not disclose his true and correct income at the time of filing the returns and that he may even disclose a lesser amount as his income cannot be countenanced.

6.When the claimants took up the matter on appeal to the Hon'ble Supreme Court, the Apex Court confirmed the view of the Madras High Court Division Bench and held as follows:-

"We are in agreement with the High Court that the determination must proceed on the basis of the income tax return, where available. The income tax return is a statutory document on which reliance may be placed to determine the annual income of the deceased. To the benefit of the appellants, the High Court has proceeded on the basis of the income tax return for the assessment year 1997-1998 and not 1999-2000 and 2000-2001 which reflected a reduction in the annual income of the deceased. (Malarvizhi –vs- UIIC,Ranipet Reported in 2020 ACJ 526)"

7.From this judgment, the inference is that, in case of IT assessee, the income as shown in the returns should be taken and the embellished income statement by the claimants has to be ignored. In case of variation in the annual returns for different years, it is not improper to choose the highest among them. In this case, for the year 2006-2007, the deceased has filed return showing his annual income as Rs.1,89,000/- this has declined in the next year to Rs.1,01,290/- and no return filed in the subsequent year (the year before his death). The Tribunal has fixed his annual income as Rs.1,80,000/- (Rs.15,000/- pm). After deducting 1/3rd for his personal expenditure, by applying the multiplier 7, the Tribunal has arrived the loss of income as Rs.8,40,000/-

8.This Court holds that, the compensation fixed is just and fair. For the accident occurred on 12/01/2009, the Tribunal has passed award on 31/07/2013. The compensation under the conventional heads is also just and fair at that point of time. Hence, the impugned award requires no interference.

9.In the result, the Civil Miscellaneous Appeal is dismissed. No costs.

24.08.2020

Index : Yes
Internet : Yes/No
jbm

To

1.The II Judge of Small Causes,
Chennai

2.The Section Officer,
VR Section,
High Court,
Madras.

Dr.G.JAYACHANDRAN,J.

jbm

Pre delivery Judgment in
C.M.A.No.1835 of 2015
and M.P.No.1 of 2015

24.08.2020