BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 03.08.2021

Pronounced on : 25.10.2021

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A. (MD).No.608 of 2019
and
C.M.P(MD)No.7463 of 2019

The Manager,
United India Insurance Company Limited,
Micro Office,
Sankaralinganar Street,
N.G.R Road, Palladam. : Appellant / 2nd respondent

Vs.

1.Selvambal : 1st Respondent/ Petitioner
2.P.K.Murali :2nd Respondent/1st Respondent
3.The Manager,
Oriental Insurance Company Limited,
PLA Building, First floor,
12A, Kovai Road,
Karur. :3rd Respondent/3rd Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the Judgment and Decree dated 02.02.2018 made in M.C.O.P.No.99 of 2014 on the file of the Motor Accident Claims Tribunal / Principal District Judge, Karur.

For Appellant : Mr.J.Suthakaran

For Respondents : Mr.K.Suresh Kumar for R.1
Mr.C.Jawahar Ravindren for R.3
No appearance for R.2

JUDGMENT

The Civil Miscellaneous Appeal is directed against the award passed in MCOP.No.99/2014, dated 02.02.2018 on the file of the Motor Accident Claims Tribunal/Principal District Court, Karur.

2. The appellant/insurer, who was directed to pay compensation of Rs.67,09,000/- (Rupees Sixty Seven Lakhs and Nine Thousand only) with interest at 7.5% per annum to the first respondent/claimant for the death of her son - Satheeshkumar, who died in an accident occurred on 20.02.2014, challenged the quantum of compensation

awarded at by the Tribunal.

3. Admittedly, the first respondent/claimant, is the mother of the deceased Satheeshkumar and she has laid the claim petition. The appellant has not disputed the liability mulcted on it and the only challenge is with respect to the quantum of compensation granted by the Tribunal.

4. The learned Counsel for the appellant would submit that the first respondent/claimant has specifically stated in the pleadings that her son was getting monthly salary of Rs.30,000/-, that she has produced salary slip showing that her son was getting gross salary of Rs.33,019.43/- and net salary at Rs.27,812/-; that the Tribunal without any acceptable evidence, has fixed the monthly income as Rs.43,000/- and arrived at Rs.65,79,000/- as total compensation; that the Tribunal had also erred in awarding Rs.1,00,000/- towards loss of love and affection and that the total award amount granted by the Tribunal is highly excessive and the same is liable to be modified.

5. As rightly pointed out by the learned Counsel for the appellant, the first respondent in her claim petition has specifically shown that the monthly income of the deceased son was Rs.30,000/- per month. In paragraph 4 of the claim statement, she has specifically stated that her son Satheeshkumar was working as a Junior Souse Chef in Leela Palace, Bangaluru and he was earning monthly income of Rs.30,000/-. During enquiry, the first respondent has summoned and examined the Assistant Manager (Human Resource Section of Leela Palace Hotel Bangaluru) as PW3 and through him, exhibited the salary certificate and pay slip for January 2014, under Ex.P14 and P15 respectively. In Ex.P14, it has been certified that the deceased Satheeshkumar was employed as Junior Souse Chef in the Hotel and his last drawn gross salary per month was Rs.30,025/- and cost to company per month was Rs.42,958/-. But, in pay slip for January 2014 under Ex.P15, they have shown the gross salary at Rs.33,019.43/- and after deductions, net amount payable as Rs.27,812/-. In Ex.P15 - pay slip, they have specifically shown the amounts payable under various heads such as Basic Pay, HRA, TA and etc.

6. PW3 in his chief examination would say that the deceased Satheeshkumar was getting monthly pay of Rs.42,958/-. In cross examination, when he was questioned about Ex.P.15 - pay slip, where the monthly gross salary is shown as Rs.33,025/- and Ex.P14 – salary certificate, where the monthly income of Rs.42,958/- is shown as Rs.42,958/-. He would say that in Ex.P15, they have only shown the salary particulars and he was given Rs.42,958/- after including certain allowances.

7.As rightly pointed out by the learned Counsel for the appellant, in Ex.P14, they have not shown any particulars about the nature and quantum of allowances given to the deceased. In Ex.P15, they have clearly specified the amounts under various heads.

8.It is pertinent to mention that PW3 in his cross examination would admit that he has not produced any other documents to show that the deceased was paid Rs.42,958/-. In re-examination, he would say that if the deceased continued in service for four or five years, he would have received a monthly income at Rs.1,50,000/- but, in cross examination, he would admit that he has not produced any document to substantiate the same.

9.In the additional typed set produced by the claimant side along with copy of Ex.P14 certificate, they have now annexed another tabular column, showing the allowances allegedly paid to the deceased Satheeshkumar and the particulars for arriving the monthly salary at Rs.43,058/-. But, as rightly pointed out by the learned Counsel for the appellant, the tabular column was in a blank sheet without any authentication. The claimant has neither summoned nor produced any document to show that the allowances now shown in the said tabular column were actually paid to the deceased Satheeshkumar.

10.When P.W.3 was in witness box, he has not deposed anything about those particulars, but the learned Trial Judge, by taking into account Ex.P14 - certificate, has fixed monthly income as Rs.43,000/-. When the employer has specifically produced the pay slip with necessary particulars, this Court is at loss to understand as to how the Tribunal has relied on Ex.P14 certificate, which is bereft of any particulars nor any supporting document and fixed the montly salary at Rs.43,000/-.

11.Considering the evidence of PW3 and Ex.P9, P14 and P15, this Court fixes the monthly income at Rs.33,020/- and the annual income would come to Rs.3,96,240/-. As per the judgment of the Honourable Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi and others** reported in 2017 ACJ 2700, 50% of the income is liable to be added towards future prospects and on such addition, the total annual income would be Rs.5,94,360/-.

12.Applying the legal dictum laid down by the Honourable Supreme Court in **Smt. Sarala Varma Vs. Delhi Transport Corporation and another** reported in AIR 2009 SC 3104, the deceased being the bachelor, 50% of the income is to be deducted towards personal and living expenses of the deceased and after such deduction, the annual income would be Rs.2,97,180/-.

13.The learned Trial Judge, applying Sarala Verma's case, has rightly applied multiplier 17, as the age of the deceased was fixed at 28 years at the time of death and if the multiplier 17 is applied, the compensation payable under the head of loss of dependency would come to Rs.50,52,060/- . The learned Trial Judge has rightly granted Rs.40,000/- towards loss of parental consortium, Rs.15,000/- for loss of estate and Rs.15,000/- for funeral expenses under the conventional heads. But, as rightly contended by the learned Counsel for the appellant, the Trial Court has also awarded Rs.1,00,000/- towards loss of love and affection. Since the Trial Court has awarded Rs.40,000/- towards loss of consortium, the question of granting compensation towards loss of love and affection does not arise at all.

14.Considering the above, the claimant is entitled to get total compensation of Rs.51,22,060/- and hence, this Court concludes that the appeal is liable to be allowed.

15.In the result, the Civil Miscellaneous Appeal is allowed and the compensation awarded at Rs.67,09,000/- by the Tribunal is reduced and is fixed at Rs.51,22,060/- along with interest at 7.5% per annum from the date of petition till payment. The learned counsel for the appellant/insurer would submit that the insurer has already deposited the entire award amount before the Tribunal. The claimant is permitted to withdraw the awarded amount with proportionate interest and costs, less amount already withdrawn, if any, by filing necessary application before the Tribunal. The appellant is permitted to withdraw the remaining amount, if any, by filing necessary application before the Tribunal. The parties are directed to bear their own costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS II)

// True Copy //

/ /2021
Sub Assistant Registrar(CS)

LR

Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The Motor Accident Claims Tribunal /
Principal District Judge, Karur.

Copy to:
The Section Officer,V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.I.SUTHAKARAN, Advocate (SR-32400[F] dated 25/10/2021)

+1 CC to M/s.K.SURESH KUMAR,Advocate (SR-32621[F] dated 26/10/2021)

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MGJ/PM(17.11.2021) 5P 6C