BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 25.02.2022
CORAM:
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR
C.M.A(MD)No.709 of 2021
and
C.M.P.(MD) No.6464 /2021

1.Sindhubhairavi
2.Minor Haritha Namali
3.Jeganathan
4.Mahalakshmi
5.Minor Thiliksha ...Appellants/Petitioners/Claimants

(Appellants 2 & 5 are minors rep. by their mother, next friend and natural guardian Sindhubairavi, 1st appellant)

Vs.

1.Chandra Sekar

2.United India Insurance Company Ltd.,
No.74-A, Salai Road,
Thillai Nagar,
Trichy - 620 018. ... Respondents/Respondents

PRAYER: The Civil Miscellaneous Appeal filed under Section 173(1) of the Motor Vehicles Act praying this Court to enhance the award in M.C.O.P.No.1042 of 2017, dated 19.02.2021, on the file of the Special District Court cum Motor Accidents Claims Tribunal, Trichirappalli.

For Appellants : Mr.K.P.Narayanakumar
For Respondents : Mr.C.Jawahar Ravindran - RR2
: No Appearance - RR1

JUDGMENT

R.SUBRAMANIAN, J.
and
N.SATHISH KUMAR, J.

The claimants, who are the wife, children and parents of the deceased Subburam, who died in a road accident that occurred on 08.08.2017 are on appeal, terming the compensation of Rs.21,29,800/- (Rupees Twenty One Lakhs Twenty Nine Thousand and Eight Hundred only) awarded by the Tribunal, as meager.

2. The factum of accident and the question of negligence need not be gone into, since the insurance company has accepted the award.

3. The claimants would contend that the deceased was earning a sum of Rs.18,500/- (Rupees Eighteen Thousand and Five Hundred only) per month. A certificate issued by the employer to that effect was produced. The Tribunal disbelieved the certificate on the ground that the supporting documents like bank passbook, etc., have not been produced. The Tribunal took the notional monthly income at Rs.9,000/- (Rupees Nine Thousand only), added 40% towards future prospects, after deducting 1/4th towards personal expenses arrived at the total loss of dependency at Rs.19,27,800/- (Rupees Nineteen Lakhs Twenty Seven Thousand and Eight Hundred only). The Tribunal also granted a sum of Rs.1,75,000/- (Rupees One Lakh Seventy Five Thousand only) towards loss of consortium and love and affection for the claimants, Rs.7,000/- (Rupees Seven Thousand only) towards transport, Rs.10,000/- (Rupees Ten Thousand only) towards funeral expenses and Rs.10,000/- (Rupees Ten Thousand only) towards loss of estate. Thus the Tribunal awarded a sum of Rs.21,29,800/- (Rupees Twenty One Lakhs Twenty Nine Thousand and Eight Hundred only).

4. Mr.K.P.Narayana Kumar, learned counsel appearing for the appellants would vehemently contend that the rejection of proof of income by the Tribunal is improper and he would also point out that the supporting document in the form of bank pass book has been sought to be produced in the appeal in C.M.P.(MD) No.6464 /2021. Relying upon certain entries in the bank passbook, the learned counsel for the petitioner would contend that the income proof offered under Ex.C.2 and Ex.C.3 should have been accepted by the Tribunal. He would also contend that the Tribunal had erred in adding only 40% towards future prospects and applying the multiplier of '17'.

5. Contending contra, Mr.C.Jawahar Ravindran, learned counsel appearing for the insurance company would submit that the appointment order Ex.C.2 which is dated 10.03.2016, would show that the consolidated salary of the deceased was only Rs.15,000/- (Rupees Fifteen Thousand only) and there is no supporting document to show that the deceased was actually paid Rs.18,500/- (Rupees Eighteen Thousand and Five Hundred only) as found in Ex.C.3. Therefore, according to Mr.C.Jawahar Ravindran, learned counsel appearing for the insurance company, the Tribunal was justified in taking Rs.9,000/- (Rupees Nine Thousand only) as notional income.

6. We have considered the submissions of the learned counsel on either side.

7. While, we agree with Mr.C.Jawahar Ravindran, learned counsel appearing for the insurance company that proof offered by Ex.C.3 may not be sufficient to fix the income as Rs.18,500/- (Rupees Eighteen Thousand and Five Hundred only). We are unable to approve the fixation of Rs.9,000/- (Rupees Nine Thousand only) as notional income by the Tribunal.

8. The deceased was an Engineering graduate in Aeronautical Engineering. The accident had occurred in 2017. The pass book that has been sought to be produced as additional evidence shows that the deceased was paid something between Rs.15,000/- (Rupees Fifteen Thousand only) and Rs.17,000/- (Rupees Seventeen Thousand only) during the previous months just prior to the accident. The salary that is paid to the deceased differs from month to month. Therefore, we do not think it would be safe to take the loss of income at Rs.18,500/-(Rupees Eighteen Thousand and Five Hundred only) as evidenced by Ex.C.2. Apart from the above, the appellants have not produced any other documents to prove the employment and receipt of salary. We have to necessarily fix the notional income and proceed to determine the compensation on the basis of the notional income.

9. Considering the fact that the deceased was an Engineering graduate and the accident had occurred in 2017, we fix the notional monthly income at Rs.17,500/- (Rupees Seventeen Thousand and Five Hundred only). As per the judgment of the Hon'ble Supreme Court in **National Insurance Company Ltd., Vs. Pranay Sethi and others**, reported in **2017 ACJ - 2700**, 40% is to be added towards future prospects. Therefore, the monthly income comes to Rs.24,500/- (Rupees Twenty Four Thousand and Five Hundred only). The deceased has got wife and two daughters apart from parents to support, therefore, after deducting 1/4th for personal expenses of the deceased, the monthly loss of dependency would Rs.18,375/- (Rupees Eighteen Thousand Three Hundred and Seventy Five only). The deceased was aged 27 years at the time of accident. Therefore the multiplier would be 17. Thus, the total dependency would be Rs.18,375 x 12 x 17 = Rs.37,48,500/- (Rupees Thirty Seven Lakhs Fourty Eight Thousand and Five Hundred only). The award of the Tribunal on the other heads is confirmed. Therefore, the total compensation would be Rs.39,50,500/- (Rupees Thirty Nine Lakhs Fifty Thousand and Five Hundred only) rounded off to Rs.39,50,000/- (Rupees Thirty Nine Lakhs Fifty Thousand only).

10. Accordingly, the Civil Miscellaneous Appeal is partly allowed and the award of the Tribunal is modified. The quantum of compensation is enhanced from Rs.21,29,800/- to Rs.39,50,000/- (Rupees Thirty Nine Lakhs Fifty Thousand only). The wife / first appellant would be entitled to Rs.20,00,000/- (Rupees Twenty Lakhs only) with proportionate accrued interest and entire costs awarded by the Tribunal. The minor children, who are the claimant Nos. 2 and 5 would each take Rs.7,50,000/- (Rupees Seven Lakhs and Fifty Thousand only) with proportionate accrued interest and the parents, who are claimant Nos.3 and 4 would each take Rs.2,25,000/- (Rupees Two Lakhs and Twenty Five Thousand only) with proportionate accrued interest. The share of the minor appellants 2 and 5 / claimant Nos. 2 and 5 shall be deposited in any one of the nationalized Bank, in an interest bearing fixed deposit, till they attain majority. The first appellant /mother and guardian of the minor appellants 2 and 5 is permitted to withdraw the interest from the above said

deposit, once in three months directly from the Bank for the maintenance of the minors. The insurance company is directed to deposit the enhanced compensation, less any amount already deposited, along with 7.5% interest per annum within a period of eight weeks from the date of receipt of copy of this judgment. There shall be no order as to costs in this appeal. C.M.P.(MD) No.6464 of 2021 is dismissed as the document produced namely, the copy of the bank passbook does not advance the case of the claimants.

Sd/-

Assistant Registrar (C.S.II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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

1.The Special District Court cum
Motor Accidents Claims Tribunal,
Trichirappalli.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.(2 Copies)

+1 cc to Mr.K.P.NARAYANAKUMAR, Advocate, SR.No.9048

JUDGMENT DELIVERED IN
C.M.A(MD)No.709 of 2021
25.02.2022

SP(CO)
GC(28.03.2022) 4P 5C