BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 27.11.2023	Delivered on: 22.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN
AND
THE HONOURABLE MR.JUSTICE P.B.BALAJI

C.M.A.(MD).No.929 of 2019
and
C.M.P.(MD)No.12509 of 2019

The New India Assurance Company Limited,
No.1215, 12th Floor, Naurang House,
Kasthurba Gandhi Marg,
New Delhi – 110 001. ... Appellant /2nd Respondent

Vs.

1.Jeganathan

2.Minor Thukitha

3.Minor Avinash

(The minor R2& R3 are rep. by their
father & next guardian Jeganathan-R1 herein)

... Respondents 1to 3 / Petitioners

4.Kumaresan @ Kumar ... 4th Respondent / 1st Respondent

Prayer:- Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree in M.C.O.P.No.5710 of 2013 dated 05.07.2019 on the file of the Motor Accidents Claims Tribunal – Special District

Court, Trichirappalli and to allow the Appeal with costs.

For Appellant : Mr.J.S.Murali

For Respondents : Mr.N.Sudhagar Nagaraj for R1 to R3

: R4 – Exparte

JUDGMENT

P.B.BALAJI,J.

The Insurance Company, aggrieved by the award in M.C.O.P.No.5710 of 2013, on the file of the Motor Accidents Claims Tribunal – Special District Court, Trichirappalli, is the appellant before us.

2. The factum of accident, manner of accident, rash and negligent driving on the part of the driver of the fourth respondent's vehicle and the said vehicle being insured with the appellant / Insurance company are not in dispute or being challenged and accordingly, the same are confirmed.

3. On the point of quantum of compensation, both the counsel

were heard.

4. The learned counsel appearing for the appellant/Insurance Company would draw our attention to Ex.P4 - Income Tax return filed by the deceased, for the assessment year 2012-2013, wherein, income from the other sources, namely, the interest received from the State Bank of Mysore was taken and according to him the same cannot be taken as for the purposes of compensation.

5. The learned counsel for the respondents/claimants relied upon the judgment of the Hon'ble Supreme Court of India in ***Vijay Kumar Rastogi vs. Uttar Pradesh State Roadways Transport Corporation*** reported in ***2018(1) TN MAC 367 (SC)***, wherein, the Hon'ble Supreme Court held that the income by way of interest from the Bank can also be considered.

6. From the records, we find that on the date of accident i.e., on 08.08.2013, the deceased was aged about 39 years and hence as per ***Sarla***

Verma's case the Tribunal, has rightly adopted the multiplier of '15' and also 40% future prospects has been taken.

7. The main contention of the learned counsel for the appellant is that in the income tax returns, the income from other sources includes "interest from Bank" and the same cannot be treated as income of the deceased for the purposes of calculating the loss of income in M.A.C.T cases. The reasoning of the learned counsel for the appellant is that the said income would continue to accrue to the claimants even after the demise of the deceased – Meena.

8. Per contra, the learned counsel for the claimants would place strong reliance on the decision of the Hon'ble Supreme Court in ***Vijay Kumar Rastogi's*** case cited *supra.* On going through the decision of the Hon'ble Supreme Court, we find that the said decision is not a judgment for the proposition that "interest from Bank" is also to be taken into account for arriving at the loss of income in M.A.C.T cases. In the facts of the case before the Hon'ble Supreme Court, the Supreme Court has found

that the Tribunal had erred in calculating the income disregarding income from other sources, which was Rs.50,454/- from commission and Rs.72/- bear Bank from interest.

9. Therefore, we are of the opinion that the said decision of the Hon'ble Supreme Court cannot be applied to the facts of the present case, where the interest received from State Bank of Mysore to the tune of Rs.2,31,941/- has to be necessarily excluded from the gross income. We find that the said argument of the learned counsel for the appellant is sustainable and therefore, entitled to be accepted. According, we modified the loss of income as follows:

Annual Income	= Rs. 2,61,241/- (-) Rs. 2,31,941 = Rs.29,300/-
Deduction (personal expenses)	= Rs. 29,300/- (-) Rs.9,767/-(ie.1/3rd) = Rs.19,533/-
Future prospects 40%	= Rs.7,813/-
Loss of income	= Rs.27,346/- X15
	= Rs.4,10,190/-

In view of the above discussion, the compensation is reworked in the manner hereunder:

Head	Awarded by the Tribunal	Awarded by this Court	Enhanced/ reduced/ confirmed
1. Loss of income	Rs. 33,32,595/-	Rs. 4,10,190/-	reduced
2.Loss of consortium	Rs. 40,000/-	Rs. 40,000/-	confirmed
3.Loss of love & affection (Claimants 2 &3)	Rs. 1,00,000/- each Rs.50,000/-	Rs. 1,00,000/	confirmed
4.Funeral expenses & Transportation	Rs. 15,000/-	Rs. 15,000/-	confirmed
Total Compensation	**Rs. 34,87,595/-**	**Rs. 5,65,190/-**	**Reduced**

10. This Civil Miscellaneous Appeal is partly allowed and the compensation is reduced from Rs. 34,87,595/- to Rs. 5,65,190/-. The first claimant is entitled to Rs.2,65,190/- with proportionate interest and costs and the minor claimants 2 and 3 are entitled to Rs.1,50,000/- each with proportionate interest and costs.

11. The appellant / Insurance Company is directed to deposit the modified award amount of **Rs. 5,65,190/-** along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, and costs awarded by the Tribunal, less the amount, if any already deposited, within a period of Six (6) weeks from the date of receipt of a copy of this judgment. Excess amount, if any, shall be refunded to the appellant / Insurance Company.

12. On such deposit being made, the first respondent / major claimant is permitted to withdraw his share amount as apportioned by the Tribunal, along with interest and costs, less the amount, if any, already withdrawn by them, after filing appropriate application before the Tribunal.

In respect of the share of minor claimants - respondents 2 & 3 herein, the Tribunal is directed to deposit their share amount in any one Nationalised Banks till they attained majority. Till then, the first respondent - father of the minors shall be permitted to withdraw the interest accrued thereon, once in three months in order to maintain the minors. There shall be no order as to costs in the present appeal. Consequently, connected Miscellaneous Petition is closed.

(T.K.R.J.) & (P.B.B.J)
22.12.2023

Internet : Yes
Index:Yes/No
Neutral Citation:Yes/No
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To

1.The Motor Accidents Claims Tribunal –

Special District Court,
Trichirappalli.

2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

<u>RMT.TEEKAA RAMAN, J.,</u>
and
<u>P.B.BALAJI,J</u>

Ls

judgment in
<u>C.M.A.(MD).No.929 of 2019</u>

22.12.2023