IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.11.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.644 of 2014

1. Murugan
   S/o late Muniappan
2. Munusamy
   S/o late Muniappan
3. Thangavel
   S/o late Muniappan
4. Muniammal
   D/o late Muniappan .. Appellants

-vs-

1. Anandabalu
   S/o Deivam
2. The Branch Manager
   The Oriental Insurance Company Limited
   No.75, Krishnan Street
   Thiruvannamalai .. Respondents

Memorandum of Grounds of Civil Miscellaneous Appeal under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 20.12.2010 made in M.A.C.T.O.P.No.961 of 2008 on the file of the Motor Accidents Claims Tribunal, Principal District Judge, Thiruvannamalai.

For Appellants :: Mr.F.Terry Chellaraja

For Respondents :: Mr.S.Jeyaram for R2
R1-Ex parte before Tribunal

JUDGMENT

It is a case of fatal accident that took place on 13.7.2008, taking away the life of Mr.Muniappan, aged about 55 years, being the father of the claimants, who was working as an agricultural coolie-cum-cattle broker, thereby it was claimed that he was earning a sum of Rs.6,000/- per month. Since the Tribunal has awarded a sum of Rs.3,07,000/-, disagreeing with the quantum of compensation, the present appeal has been filed seeking a reasonable enhancement.

2. Learned counsel for the appellants/claimants submitted that on 13.7.2008, at about 6.30 P.M., while the deceased was walking on the Tiruvannamalai-Chengam road, near Ammapalayam junction, a car bearing Registration No.TN 31 AZ 7630 coming from Chengam side proceeding towards Tiruvannamalai, dashed against their father and caused multiple injuries on his head,

leg, ear and all over the body. Immediately he was rushed to Government Hospital, Tiruvannamalai for treatment, however, he succumbed to the multiple injuries in the hospital. Subsequently, a First Information Report in Crime No.170 of 2008 was also registered before the Paachal Police Station against the offending driver of the vehicle bearing Registration No.TN 31 AZ 7630 for the offence under Sections 279 and 304(A) of IPC. Thereafter, when the claim petition was laid before the Tribunal, the first son of the deceased, namely, Murugan was examined as P.W.1. In his evidence he has deposed that when his father was walking on the left side of the road leading from Tiruvannamalai to Chengam, the offending vehicle came and dashed against his father causing injuries, as a result he died at the age of 55 years and that the claimants have been deprived of the monthly income of Rs.6,000/-. Adding further, he submitted that when a criminal case has been registered in Crime No.170 of 2008 for the offence under Sections 279 and 304(A) of IPC against the offending driver, it goes without saying that the accident occurred only due to the rash and negligent driving of the offending vehicle bearing Registration No.TN 31 AZ 7630. The Tribunal also, accepting the evidence of P.W.1, which was corroborated by the evidence of an independent eye-witness Mr.Govindasamy, who was examined as P.W.2, being the author of the First Information Report, Ex.P1, supporting the case of the claimants that while the deceased was walking on the left side of the road on 13.7.2008 at about 6.30 P.M., he was hit by the offending vehicle, categorically held that the accident occurred only due to the rash and negligent driving by the driver of the first respondent's car, thereby saddled the liability on the insurance company.

3. Coming to the quantum of compensation, he pleaded that although the claimants made a claim of Rs.6,000/- as the monthly income of the deceased, in the absence of any proof, the Tribunal fixed a sum of Rs.3,000/- as the notional monthly income of the deceased. Adding further, he submitted that as the deceased was aged 55 years, the proper multiplier '11' has been adopted. However, with regard to future prospects, the Tribunal has not added anything. If we apply the precedent decided by the Apex Court in Sarla Verma and others v. Delhi Transport Corporation and another, 2009 (2) TN MAC 1 (SC), as the deceased was aged 55 years, 15% of the actual salary should have been added towards future prospects. But in the present case, the Tribunal has committed a major infirmity in not properly fixing the income of the deceased. In Syed Sadiq, etc. v. Divisional Manager, United India Insurance Co.Ltd., the Apex Court has held that a sum of Rs.6,500/- can be taken as the notional monthly income of a vegetable vendor, even though there was no documentary evidence produced to establish the monthly income. While that being the case, when the deceased was an agricultural coolie-cum-cattle broker, a sum of Rs.6,000/- as was pleaded could have been taken, if not Rs.6,500/- per month. Again coming to the award of compensation under the non-pecuniary heads, he has submitted that when there are four claimants, towards the loss of love and affection, only a sum of Rs.10,000/- has been awarded. Therefore, he pleaded that some

reasonable amount of compensation has to be fixed, in the light of the ratio laid down by the Apex Court in Rajesh & others v. Rajbir Singh & others, 2013 (9) SCC 54.

4. Replying to the above contentions, the learned counsel for the second respondent Insurance company submitted that the deceased-Muniappan was aged about 55 years at the time of accident. Since all the claimants, namely, three sons and one daughter are all married and settled, they cannot be treated as the dependents of the deceased. Therefore, fixing of a sum of Rs.3,000/- as the notional monthly income and not fixing any amount towards future prospects cannot be found fault with, he pleaded.

5. This Court is also not able to find fault with the fixation of Rs.3,000/- as the monthly income of the deceased by the Tribunal. The reason is that three sons and one daughter of the deceased got married and have settled, hence they are not depending on the income of the deceased, therefore, this Court is not inclined to modify the amount of Rs.3,000/-, which has been fixed by the Tribunal as the monthly income of the deceased. With regard to the addition towards future prospects also, this Court, considering the factor that the claimants are not depending upon the income of the deceased, is not inclined to add 15%, which otherwise this Court could fix in appropriate cases. Hence this Court is not inclined to add anything towards future prospects. Therefore, the loss of earnings in a sum of Rs.2,64,000/- fixed by the Tribunal is sustained. However, this Court finds merit in the submission of the learned counsel for the appellants for not fixing a reasonable amount towards loss of love and affection by the Tribunal. Whether the claimants are married or unmarried does not make any difference to award compensation under the said head. Therefore, this Court is inclined to award a sum of Rs.1,00,000/- each to the four claimants, namely, sons and daughter of the deceased towards loss of love and affection. Further a sum of Rs.25,000/- is awarded towards funeral expenses. However, the award of Rs.500/- each towards transport charges and damage to cloth and articles as ordered by the Tribunal is sustained. Accordingly, the award of the Tribunal is modified and the appellants are entitled to a total compensation of Rs.6,90,000/- together with 7.5% interest per annum from the date of petition till realisation, as detailed below:-

(a) Loss of earnings Rs.2000x12x11	-	Rs.2,64,000
(b) Loss of love and affection Rs.1,00,000 x 4	-	Rs.4,00,000
(c) Funeral Expenses	-	Rs. 25,000
(d) Transport charges	-	Rs. 500
(e) Damage to cloth and articles	-	Rs. 500
Total		Rs.6,90,000

Out of the said amount, the appellants 1 to 3 are each entitled to Rs.1,70,000/- and the fourth appellant is entitled to Rs.1,80,000/-. The second respondent insurance company is directed to deposit the entire amount of compensation together with interest to the credit of the M.C.O.P.No.961 of 2008 on the file of the Motor Accident Claims Tribunal, Principal District Judge, Tiruvannamalai within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the appellants/claimants are entitled to withdraw the entire apportioned amount with accrued interest by moving appropriate applications before the Tribunal, after complying with the formalities. With this modification, the appeal stands partly allowed. No costs.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

ss

To

The Principal District Judge
Motor Accident Claims Tribunal
Tiruvannamalai

1 cc to M/s. M. Malar, Advocate, Sr. 67145
1 cc to Mr.S. Jayaram, Advocate, Sr. 67555

C.M.A.No.644 of 2014

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