

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 14.11.2017
CORAM
THE HON'BLE Mr.JUSTICE A.SELVAM
and
THE HON'BLE Mr.JUSTICE P.KALAIYARASAN

C.M.A.No.2935 of 2017

1.B.Manjula
2.B.Arun Kumar
3.B.Abitha @ B.Abinaya
Minor rep. by her mother
and next friend B.Manjula ... Appellants/Petitioners1 to 3

Vs

1.V.Sudharshanam Naidu
2.The Oriental Insurance Co. Ltd.,
115, Oriental House,
Prakasam Salai, Broadway,
Chennai-108. ... Respondents

Civil Miscellaneous Appeal preferred against the judgment and decree dated 04.04.2017 made in M.C.O.P.No.3524 of 2014, on the file of the Motor Accident Claims Tribunal [Chief Judge, Court of Small Causes], Chennai.

For Appellants: Ms.A.Salomi

For Respondents : Mr.G.Jeremiah for R1
Mr.M.Krishnamoorthy for R2

J U D G M E N T

[Judgment of the Court was delivered by A.SELVAM, J.]

This Civil Miscellaneous Appeal is directed against the award dated 04.04.2017, passed in M.C.O.P.No.3524 of 2014, by the Motor Accident Claims Tribunal, Chennai.

2.The appellants herein, as petitioners, have filed M.C.O.P.No.3524 of 2014, on the file of the Motor Accident Claims Tribunal for getting compensation, where the respondents have been arrayed as respondents.

3.The deceased by name Balakrishnan is the husband of first petitioner and the father of the remaining petitioners. On the fateful day of accident, the first respondent has driven tractor with trailer bearing registration Nos.TN 20 AH 2152 and TN 20 AH 2167 in a rash and negligent manner and dashed against the deceased in the place of accident and due to accident, he passed away. Further, it is averred in the petition that the deceased is a construction contractor and thereby, earned Rs.18,000/- per mensem. The vehicle which caused accident has been insured with the second respondent. Under the said circumstances, the present petition has been filed for getting compensation.

4.In the counter filed on the side of the second respondent, it is averred to the effect that the accident has not been happen due to rash and negligent driving of the first respondent. The petitioners have not filed any document for the purpose of proving the monthly income of the deceased. The petitioners have claimed excessive compensation and there is no merit in the petition and the same deserves to be dismissed.

5.On the basis of available evidence on record, the Motor Accident Claims Tribunal has awarded a compensation of Rs.13,04,912/- and in order to enhance the quantum of compensation, the present Civil Miscellaneous Appeal has been preferred at the instance of the petitioners, as appellants.

6.The learned counsel appearing for the appellants/petitioners has repeatedly contended to the effect that at the time of accident, the deceased as a construction contractor, whereby, he earned monthly income of Rs.18,000/- and the trial Court, without considering the abundant evidence available on record on the side of the appellants/petitioners, has erroneously fixed the monthly income of the deceased at Rs.8,000/- and therefore, the quantum of compensation fixed by the Motor Accident Claims Tribunal is liable to be modified.

7.Per contra, the learned counsel appearing for the second respondent has contended to the effect that after accident, the brother of the deceased has preferred a police complaint, wherein, it is clearly stated that the deceased has served as a coolie and further, on the side of the appellants/petitioners, no documents have been filed for the purpose of proving monthly income of the deceased and the Motor Accident Claims Tribunal has rightly fixed monthly income of the deceased at Rs.8,000/- and further, in respect of other heads, the Motor Accident Claims Tribunal has given excessive compensation and therefore, the present Civil Miscellaneous Appeal deserves to be dismissed.

8.The specific case of the appellants/petitioners is that the deceased, at the time of accident has earned Rs.18,000/- per mensem. As rightly pointed out on the side of the second respondent, on the side of the appellants/petitioners, no document has been filed for the purpose of proving the regular monthly income of the deceased. The Tribunal, after considering the available evidence on record, has fixed monthly income of the deceased at Rs.8,000/-. Further, in Ex.P1, it has been clearly stated that the deceased, at the time of accident, served as coolie. Considering the lack of evidence on the side of the appellants/petitioners with regard to regular monthly income of the deceased and also considering his age, the Tribunal has rightly fixed the monthly income of the deceased at Rs.8,000/-.

9.The learned counsel appearing for the appellants/petitioners has relied upon the decision rendered in Special Leave Petition [Civil] No.25590 of 2014 by the Hon'ble Apex Court [Constitutional Bench], wherein, in a case of death, aged about 40 to 50, 25% can be awarded towards future prospects. In the instant case, 30% has been awarded and likewise, in the remaining heads, the Tribunal has awarded excessive amounts. Considering the overall circumstances, this Court is of the view that the quantum of compensation fixed by the Tribunal is not liable to be modified and altogether the present Civil Miscellaneous Appeal deserves to be dismissed.

In fine, this Civil Miscellaneous Appeal is dismissed with out costs. The award dated 04.04.2017, passed in M.C.O.P.No.3524 of 2014, by the Motor Accident Claims Tribunal, Chennai is confirmed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

gya

To

The Motor Accident Claims Tribunal,
[Chief Judge, Court of Small Causes],
Chennai.

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+1 cc to M/s.M.Krishnamoorthy Advocate sr 80426
+2 cc to M/s.V.Venkatesan Advocate sr 80810
+1 cc to Mr.G.Jeremiah Advocate sr 80775

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