IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2017

CORAM : THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

CMA.No.1468 of 2008

1.T.Manonmani
2.T.Manikandan
3.T.Balashankar @ Shankar
4.Gowri Manohari
5.Sarulatha
6.Kamatchi ...Appellants/Petitioner

Vs.

1.S.Mangayarkarasi

2.The National Insurance Company Ltd
12, KK Road, Murugan Theatre Complex,
Villupuram. ... Respondents/Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 17.10.2005 in MACTOP.No.738 of 2003 on the file of the Principal District Court / Motor Accident Claims Tribunal, Villupuram.

For Appellants :Mr.T.Sezhiyan
for Ms.R.Meenal

For Respondents :Mr.N.B.Sureha [for R2]

JUDGMENT

The legal heirs of the victim of a fatal accident have approached this Court seeking enhancement of compensation impugning the award passed in MACTOP.No.738 of 2003 on the file of the Motor Accidents Claims Tribunal (Principal District Court), Villupuram.

2. On 29.9.2003, one Thanikachalam was fatally knocked down by a speeding bus belonging to the first respondent and insured with the second respondent/Insurance Company, when he was travelling as a pillion rider in a two wheeler. At that relevant time he was aged 49 years and was stated to be a carpenter. Seeking a total compensation of Rs.11,00,000/- and restricting it to Rs.4,00,000/-, his widow, four children and the mother of the deceased approached the Tribunal, whereas the Tribunal has passed an award for Rs.3,34,000/-. In arriving at

the loss of dependency, it notionally determined the monthly income of the deceased at Rs.3,000/- and after providing 1/3rd towards his personal expenses and applying a multiplier of 13, it arrived at a total loss of dependency at Rs.3,34,000/-.

3. The learned counsel for the appellant submitted that on the head of pecuniary income, the Tribunal ought to have fixed his monthly income as Rs.7,000/-, and he being a carpenter and working in an unorganised sector he would still be making this income even in the year 2003. He further added that on the head of non-pecuniary damages, the Tribunal has arbitrarily fixed a very low sum as compensation and submitted that the dictum in Sarala Varma & Others Vs Delhi Transport Corporation & Another [2009(2)TNMAC 1(SC)] be followed.

4. The learned counsel for the second respondent/ Insurance Company however, contended that to fix monthly income at Rs.3,000/- notionally in the year 2003 is on a much higher side and advantage that may have accrued by subsequent developments in law may not be telescoped backwards, and submitted that a realistic approach may be adopted in fixing just and fair compensation in law.

5. After carefully weighing rival submissions, I fix the notional income of deceased at Rs.3,000/- per month and after providing one fourth for his personal expenses, his monthly income would be at Rs.2,250/- and by applying multiplier 13, the total loss of dependency is assessed at Rs.3,51,000/-. After giving a careful consideration to all the facts and circumstances available on records, I determine the compensation on the other heads as below :

Heads	Enhanced amount (Rs.)
Loss of dependency	3,51,000.00
Loss of consortium	50,000.00
Loss of love and affection (4 children & mother of deceased) @ Rs.25,000/- each	1,25,000.00
Funeral Expenses	5,000.00
Total :	5,31,000.00

5. Therefore, the appellants/claimants are entitled for compensation at Rs.5,31,000/- with interest at the rate of 7.5% per annum from the date of claim petition till the date of payment. The claimants shall pay the necessary court fee on the enhanced compensation. The appeal is allowed to the extent indicated above. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To:

1.The Motor Accidents Claims Tribunal,
Principal District Court,
Villupuram.

2.The Section Officer,
VR Section,
High Court, Madras.

+1 cc to Mrs.R.Meenal Advocate sr 2260
+1 cc to Mrs.N.B.Surekha Advocate sr 1910

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