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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 14.11.2017

CORAM

THE HONOURABLE DR. JUSTICE S.VIMALA

C.M.A. NO. 3211 OF 2017

AND

C.M.P. NO. 19829 OF 2017

The District Collector
Having Office at Sathuvachari
Vellore - 9.

.. Appellant/Respondent

- Vs -

1. Khader Bi
2. Minor Sydhani
(R-2 rep. By mother &
natural guardian R-1)

.. Respondents/Petitioner

Civil Miscellaneous Appeal filed u/s 173 of the Motor Vehicles Act 1988, against the judgment and decree dated 04.08.2014 passed by the Motor Accident Claims Tribunal (Sub Court), Ranipet, made in MCOP No.144/2009.

For Appellant : Ms. Jayashree, GA
For Respondent : Mr. C.Prabhakar

JUDGMENT

The claimants are the wife and daughter of the deceased Ghouse. The deceased, aged 43 years, agriculturist by profession, allegedly earning a sum of Rs.6,000/- per month, met with a fatal accident on 3.5.09.

2. It is the case of the claimants that on 3.5.09, the deceased, riding his bicycle towards his land to do agricultural work, while trying to cross the National Highway near MGR Junction of Melvishram, the Tata Sumo, bearing Regn. No.TN-23-G-0571, driven by its driver in a rash and negligent manner, dashed against the deceased, in which the deceased sustained grievous injuries and he was immediately rushed to CMC Hospital, Vellore. However, inspite of treatment given, the deceased succumbed to the injuries and died on 13.5.09. A case in Cr. No.497/09 was registered against the driver of the Tata Sumo u/s 279 and 337 IPC, which was later on altered to one under Section 304 (2) IPC on the death of the deceased. Therefore, the claim petition was laid by the legal representatives claiming a sum of



Rs.6,00,000/= as compensation.

3. The District Collector, Vellore, contested the claim on the ground that negligence in causing the accident was only on the part of the deceased, who was riding his bicycle at that point of time and, therefore, the District Administration was not liable to pay any compensation. The amount of compensation claimed was also termed as excessive.

4. The Tribunal, considering the materials placed before, both oral and documentary, passed an award for a sum of Rs.6,00,000/=, the break-up of which are as hereunder :-

Loss of Dependency	:	Rs. 5,04,000/-
Loss of Love & Affection	:	Rs. 20,000/-
Funeral Expenses	:	Rs. 10,000/-
Loss of Consortium	:	Rs. 20,000/-
Loss of Estate	:	Rs. 6,000/-
Towards Mental Agony	:	Rs. 40,000/-

Total		Rs.6,00,000/-

5. While calculating the loss of dependency, the Tribunal has taken the monthly income of the deceased at Rs.4,500/= per month and deducting 1/3rd towards personal expenses, adopting multiplier of 14, arrived at the loss of dependency at Rs.5,04,000/=. The Tribunal awarded a sum of Rs.10,000/= towards loss of love and affection; Rs.20,000/= towards funeral expenses; Rs.6,000/- towards loss of estate; Rs.20,000/- towards loss of consortium; Rs.40,000/= towards mental agony, in all totalling to a sum of Rs.6,00,000/=. Aggrieved by the said compensation awarded, the appellant is before this Court by filing the present appeal.

6. Learned counsel appearing for the appellant submits that the compensation awarded towards mental agony is not permissible and, therefore, the award is excessive and requires proportionate reduction. Except for quantum and negligence, no other ground has been raised by the learned counsel for the appellant.

7. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents and perused the materials available on record as also the judgment passed by the Court below.

8. True that there cannot be an award under the head "Mental Agony" in case of a fatal accident. However, the fact remains that the deceased was initially admitted in CMC Hospital



and had taken treatment for a period of 10 days. The pain and suffering that the deceased would have undergone will have to be taken into account while computing compensation. Apart from the above, it is evident from the order that no compensation has been awarded towards medical expenses incurred by the deceased during the period of hospitalisation. In such a scenario, this Court is of the considered opinion that the compensation in a sum of Rs.40,000/-, awarded under the head mental agony would stand transposed under the head "medical expenses" and "loss of estate", for which no amount has been awarded.

9. So far as loss of dependency is concerned, the monthly income of the deceased has been taken as Rs.4,500/-, though it was claimed that the monthly income of the deceased was Rs.6,000/-. Therefore, the amount arrived at by the Tribunal towards monthly income is at a modest estimate and cannot be said to be excessive or unreasonable. Further, the Tribunal has also not taken the future prospects of the deceased in earning higher income. Therefore, it cannot be said that the quantum of compensation awarded under the head 'loss of dependency' cannot be said to be excessive. Similarly, towards loss of love and affection and loss of consortium, the compensation awarded is minimal and reasonable and, therefore, no interference is called for with regard to the above compensation awarded.

10. Insofar as the finding of the Tribunal on the aspect of negligence is concerned, it is the contention of the learned counsel for the appellant that but for the deceased crossing the National Highway in a bicycle without adherence to the basic rules of traffic, the accident could not have taken place and, therefore, the award is unsustainable.

11. A perusal of the documents, both oral and documentary, reveals that apart from the legal representatives of the deceased, an eye witness has been examined, who has spoken about the rash and negligent driving on the part of the driver of the car. Moreover, R.W.1, in his evidence, deposed that the District Administration was on election emergency on that day and while he was driving, the deceased crossed the road all of a sudden and, therefore, he lost control over his driving the vehicle. This part of the evidence has been considered by the Tribunal in right perspective and taking into account the evidence of the independent witness, the FIR and other documents, the Tribunal rightly came to the conclusion that the negligence was only on the part of the driver of the car and not on the part of the deceased. This Court, on a careful perusal and analysis of the evidence, is of the considered view that the finding arrived at by the Tribunal with regard to negligence does not require any interference and is liable to be sustained.



12. For the reasons stated above, this Court finds no error in the award passed by the Tribunal and, accordingly, the same is confirmed. There being no merit in the appeal, it is accordingly dismissed. Consequently, connected miscellaneous petition is also dismissed. However, there shall be no order as to costs.

13. The appellant is directed to deposit the entire award amount, along with interest and costs as ordered by the Tribunal, less the amount, if any, already deposited, to the credit of MCOP No.144/2009 on the file of the Motor Accident Claims Tribunal, (Sub Judge), Ranipet, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit, the Tribunal is directed to transfer the award amount directly to the bank account of the claimants as per apportionment and as per the order passed by the Tribunal.

Sd/-
Assistant Registrar (CS-vii)

//True Copy//

Sub Assistant Registrar

GLN
To
1. The Presiding Officer,
Motor Accident Claims Tribunal
(Sub Judge)
Ranipet.

+1cc to the Government Pleader, S.R.No. 80444
+1cc to Mr.C.PRABHAKARAN, Advocate, S.R.No. 80608

C.M.A. NO.3211 OF 2017

PVS (CO)
TR(07/03/2018)