BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.07.2017

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD)No.404 of 2014

S.Surumbayee ... Appellant / Petitioner

Vs.

1.P.Ravichandran

2. The Division Manager,
United India Insurance Co.Ltd.,
Namakkal ... Respondents/ Respondents

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree made in M.C.O.P.No.241 of 2011, on the file of the Motor Accident Claims Tribunal, (Subordinate Court), Kulithalai, dated 24.01.2014.

For Appellant :Mr.T.Selvakumaran
For Respondents :Mr.J.S.Murali
for R.2
For R.1 : No Appearance

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J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/claimant against the judgment and decree made in M.C.O.P.No.241 of 2011, on the file of the Motor Accident Claims Tribunal, (Subordinate Court), Kulithalai, dated 24.01.2014.

2. The brief facts of the case are as follows:

It is a case of fatal accident took place on 03.03.2011 at about 05.00 p.m. at Tharakampatti – Palaviduthi road. While the deceased was riding his bicycle, a lorry bearing Registration No.TN-28-F-4411 came in a rash and negligent manner and dashed against the deceased, due to which, the deceased sustained severe injuries and he was admitted in the Government Hospital, Karur. However, he succumbed to his injuries. At the time of accident, the deceased was aged about 38 years old and he was earning a sum of Rs.6,000/-p.m., by working as a Watchman. The claimant is the mother of the deceased and she filed a claim petition in M.C.O.P.No.241 of 2011 on the file of the Motor Accident Claims

Tribunal, Subordinate Court, Kulithalai, claiming a sum of Rs.5,00,000/- as compensation.

3. In the counter affidavit filed by the second respondent / Insurance Company before the Tribunal, it denied the age and income of the deceased and it also denied the manner in which the accident had occurred.

4. Before the Tribunal, the appellant/Claimant examined two witnesses as P.Ws.1 and 2 and marked four documents as Ex.P.1 to Ex.P.4. On the side of the respondents, neither any witness was examined nor any document was marked.

5.The Tribunal, after considering the pleadings, oral and documentary evidence and arguments of the counsel for the learned Counsel appearing on either side and also appreciating the evidence on record, held that the accident occurred only, due to the rash and negligent driving of the driver of the offending vehicle which was insured with the second respondent/Insurance Company and directed the second/Insurance Company to pay a sum of Rs.2,58,000/-, as compensation to the claimant.

6. Aggrieved by the quantum of compensation, the appellant/claimant has filed the present Civil Miscellaneous Appeal.

7. The learned Counsel for the appellant/claimant submitted that when the deceased was earning a sum of Rs.6,000/- p.m. by working as watchman, the Tribunal has wrongly fixed the monthly income of the deceased as Rs.4,500/-. He further contended that while adopting multiplier for arriving loss of income, the Tribunal has wrongly adopted the multiplier by taking into account the age of the claimant, instead of taking the age of the deceased. He also submitted that the amount awarded by the Tribunal under the other heads are also very meagre. Hence, the learned Counsel for the appellant/claimant needs interference of this Court to the award passed by the Tribunal and seeks enhancement of compensation.

8. The learned counsel for the second respondent/Insurance Company would submit that based on the available oral and documentary evidences, the Tribunal has rightly come to the conclusion and arrived at correct compensation under various heads and hence, it does not require any interference at the hands of this Court.

9. Heard the learned counsel appearing on both sides and perused the materials available on record.

10. As rightly pointed out by the learned counsel appearing for the appellant the Tribunal has erred in fixing the

income as Rs.4,500/- as monthly income of the deceased. Further, while adopting the multiplier method, the tribunal had wrongly taken the age of the claimant/mother instead of the age of the deceased. This is apparent error on the face of the record. In this connection, it is useful to refer the judgment of the Honourable Supreme Court in ***Sarla Verma Vs. Delhi Transport Corporation*** reported in ***2009(2) TNMAC 1 (SC)***, wherein, for arriving at loss of income, the multiplier has to be adopted by taking into account the age of the deceased. If that being so, the correct multiplier would be "15". If 50% of the income is given towards future prospectus of the deceased, it would be arrived at Rs.6,750/- (Rs.4,500/- + Rs.2,250/-), in which, if 50% personal expenses of the deceased are deducted, it works out to Rs.3,375/-. In view of the above cited decisions of the Honourable Supreme Court, the loss of income has to be arrived at Rs.3375/- x12X15=Rs.6,07,500/-. (Rupees Six Lakhs Seven Thousand and Five Hundred Only). Insofar as other heads are concerned, the Tribunal has awarded a sum of Rs.10,000/- towards loss of love and affection and a sum of Rs.5,000/- towards funeral expenses, which are confirmed by this Court. Accordingly, the compensation of Rs.2,58,000/- awarded by the Tribunal is hereby enhanced to a sum of Rs.6,22,500/-(Rupees Six Lakhs Twenty Two Thousand Five Thousand Only), under the following heads:-

For loss of income	: Rs.6,07,500/-
For loss of love and affection	: Rs. 10,000/-
For funeral expenses	: Rs. 5,000/-
Total	: Rs.6,22,500/-

11. At this juncture, the learned counsel appearing for the insurance company would submit that the claimant itself has restricted his claim only to Rs.5,00,000/- before the Tribunal. Hence, he prayed for appropriate orders.

12. It is a pathetic case that the deceased is the only son of the claimant. She lost her beloved son in the fateful accident. The untold sufferings and mental agony undergone by her at the time of accident and remaining period of her life could not be compensated in terms of money to be granted by this Court. There could be many reason that the litigant may not seek for the actual compensation before the tribunal, such as, poverty, illiteracy, mental agony, approaching an advocate, awareness of law, time and so on and so forth. Therefore, this Court deems it fit to enhance the compensation though the claimant has restricted her claim to a sum of Rs.5,00,000/-.

13. In the result, this Civil Miscellaneous Appeal is

allowed by enhancing the compensation from Rs.2,58,000/- to Rs.6,22,500/-(Rupees Six Lakhs Twenty Two Thousand Five Hundred Only) along with interests and costs at the rate of 7.5% p.a. The Insurance Company is directed to deposit the entire award amount with accrued interest and costs, less the amount, if any, already deposited before the tribunal within a period of eight weeks from the date of receipt of a copy of this order and on such deposit being made, the claimant is permitted to withdraw the entire award amount along with interest and costs without filing any formal petition before the Tribunal. The appellant/claimant is directed to remit the enhanced Court fee before the Court below for enforcement of the enhanced award granted by this Court. No Costs.

Sd/-
Assistant Registrar(CO)

/True copy/

Sub Assistant Registrar

To,

1. The Motor Accident Claims Tribunal,
   (Subordinate Court), Kulithalai,

2. The Record Keeper,
   Vernacular Section,
   Madurai Bench of Madras High Court,
   Madurai.

Ssm
AE/MR KKR/SAR1/11.08.2017/4P/3C

C.M.A(MD)No.404 of 2014
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