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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.10.2018

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.484 of 2009

1.Indirani

2.Ganapathi pillai

3.Anjalai

...Appellants/Claimants

Vs

1.Saravanan

2.Divisional Manager,

The New India Assurance Company Limited,

No.106, Periya Street,

Thiruvannamalai.

...Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dt 13.08.2007 in MCOP No:1015/2006 on the file of the Motor Accident Claims Tribunal, District Court, Thiruvannamalai.

For Appellants : Mr.F.Terry Chella Raja

For Respondents: R1 - Exparte

: Mr.S.Manohar for R2

J U D G M E N T

The instant appeal has been filed by the claimants seeking enhancement of compensation under the award dated 13.08.2007 passed by the Motor Accident Claim Tribunal, District Court, Thiruvannamalai in M.C.O.P No.1015 of 2006.

2.The brief facts leading to the filing of the instant appeal are as follows:

(i)One Kumar died on 06.09.2006 as a result of an accident caused by a car bearing Registration No.TN 09 U 7260, owned by the first respondent and insured with the second respondent. The dependants of the deceased Kumar are the Appellants herein.

(ii)They preferred a claim in M.C.O.P.No.1015 of 2006, seeking a compensation of Rs.10,00,000/- for the death of Kumar.



(iii) The Motor Accident Claims Tribunal by its Award dated 13.08.2007 in M.C.O.P.No.1015 of 2000, directed the second respondent to pay the Appellants a sum of Rs.3,27,000/- together with interest at 7.5% per annum from the date of claim till the date of realization.

3. Aggrieved by the quantum of compensation awarded by the Tribunal in its Award dated 13.08.2007 in M.C.O.P.No.1015 of 2006, the instant appeal has been filed by the claimants seeking enhancement of compensation.

4. Heard, Mr.F.Terry Chella Raja, the learned Counsel for the Appellants and Mr.S.Manohar, learned Counsel for the second respondent. The first respondent has remained ex parte before the Tribunal as well as before this Court.

5. According to the learned Counsel for the Appellants, the Tribunal has erroneously assessed the monthly income of the deceased only at Rs.2,500/-, even though, the deceased Kumar was earning a monthly income of Rs.6,000/- as a conductor at the time of the accident. According to him, to prove his avocation, the Appellants have filed the conductor license of the deceased as Ex.P9 before the Tribunal. But, according to him, the Tribunal has not considered the same and has fixed the notional income of the deceased only at Rs.2,500/-, which is very low considering the fact that the accident happened in the year 2006.

6. Further, the learned Counsel for the Appellants would contend that the Tribunal has not compensated the Appellants adequately under the heads, loss of consortium and funeral expenses and has also not awarded any compensation towards loss of estate and love and affection.

7. Per Contra, learned Counsel for the second respondent would submit that the compensation awarded to the Appellants under the impugned Award is a just compensation. He would submit that the Appellants did not produce any document before the Tribunal to show that the deceased was earning a monthly income of Rs.6,000/- at the time of the accident. Further, he would contend that the evidence let in by the Appellants is contradictory to their pleadings in the claim petition. According to him, in the claim petition, the Appellants had disclosed that the deceased was an agriculturist and mason whereas in the oral evidence, they have disclosed that the deceased was a bus conductor.

8. This Court after having considered the materials available on record and after examining the impugned Award and after hearing submissions of the respective Counsels observes the following:



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(a) It is an undisputed fact that Kumar died as a result of an accident caused by the vehicle insured with the second respondent/Insurance Company. The Tribunal has also given a categorical finding that only due to the rash and negligent driving by the driver of the insured vehicle, the accident had happened which resulted in the death of Kumar.

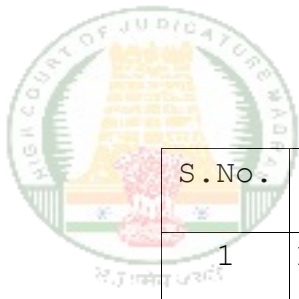
(b) In Motor Accident Claims, strict rules of pleadings are not to be applied. The rights available to the victims of the Motor Accident Claims under the Motor Vehicles Act and its Rules have to be interpreted as far as possible benefiting the claimants. Motor Vehicles Act is a benevolent and beneficial legislation meant to protect the victims in Motor Accident cases.

(c) This Court by its order dated 26.09.2018, directed the first Appellant, who is the wife of the deceased to be personally present in Court. As directed by this Court, the first Appellant was present before this Court today. This Court put few questions to the first Appellant regarding the avocation of the deceased at the time of the accident. The first Appellant informed this Court that the deceased was working as a part time bus conductor and was holding the conductor licence and during the remaining days whenever he is not a bus-conductor he was also doing agricultural and masonry works. Before the Tribunal, in their deposition, the Appellants have submitted that the deceased was a conductor and the conductor license was also marked as an exhibit to establish that he was a conductor at the time of the accident.

(d) The compensation awarded to the Appellant towards loss of consortium under the impugned Award is also inadequate and it is enhanced to Rs.40,000/- by this Court. The compensation awarded towards funeral expenses under the impugned Award is Rs.2,000/- which is enhanced to Rs.15,000/- by this Court and towards loss of estate Rs.15,000/- is granted.

(e) As per Pranay Sethi's case rendered by the Hon'ble Supreme Court reported in (2017) 16 SCC 680, 40% of the salary of Rs.4,500/- will have to be added as future prospects which works out to Rs.6,300/-. In the instant case, the deceased being a driver holding a valid heavy vehicle driving license would certainly have suffered loss of future prospects and therefore, the future prospects at 40% amounting to Rs.1,800/- p.m. is awarded and accordingly towards loss of dependency Rs.8,06,400/- is awarded as compensation to the Appellants by this Court.

9. In the result, the Award dated 13.08.2007, in MCOP No.1015 of 2006, is enhanced by this Court in the following manner:



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S.No.	Heads	Amount awarded by the Tribunal	Modified amount
1	Loss of dependency	Rs.3,20,000/- (Rs.2,500x1/3x12x16)	Rs.8,06,400/- (Rs.4,500+40%x12x16x1/3)
2	Loss of consortium	Rs.5,000/-	Rs. 40,000/-
3	Funeral expenses	Rs.2,000/-	Rs. 15,000/-
4	Loss of estate	Nil	Rs. 15,000/-
	Total	Rs.3,27,000/-	Rs.8,76,400/-

10.In the result, the appeal is partly allowed by enhancing the compensation from Rs.3,27,000/- to Rs.8,76,400/- together with interest at the rate of 7.5% per annum from the date of deposit till the date of realization. The second respondent is directed to deposit Rs.8,76,400/- together with interest at the rate of 7.5% per annum from the date of deposit till the date of realization, after deducting the amount already deposited, if any, to the credit of MCOP.No.1015 of 2006, on the file of the Motor Accident Claims Tribunal, District Court, Thiruvannamalai, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Appellants are permitted to withdraw the said sum by filing an appropriate application. However, there shall be no order as to costs.

Sd/-

Assistant Registrar(CS VI)

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Sub Assistant Registrar

tsg/pam

To

1.The Motor Accident Claims Tribunal,
District Judge, Thiruvannamalai.

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

+lcc to Mr.M.Malar, Advocate, S.R.No.68314

+lcc to Mr.S.Manohar , Advocate, S.R.No.68252

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GJII(Co)
CS/13/12/2018