IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated : 09.03.2018

Coram

The Hon'ble Mr.Justice R.Subbiah
and
The Hon'ble Mr. Justice P.D.Audikesavalu

C.M.A.No.1375 of 2013

1. M. Eswari
K.Narayanan (deceased)
2. N.Selvi ...Appellants/Petitioner

Vs.

1. A. Elumalai
2. Reliance General Insurance Co. Ltd.,
Second Floor, Balmer Lawrie House,
No.628, Anna Salai,
Chennai - 600 018. ...Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, 1988, against the judgment and decree, dated 15.12.2012, made in M.A.C.T.O.P. No.1016 of 2009, on the file of the Motor Accident Claims Tribunal (Chief Judge, Court of Small Causes), Chennai.

For Appellants : M/s.P.T. Salim Fathima
For Respondent-1 : Mr. R.Sankarappan
For Respondent-2 : M/s.C.Harini, for M/s. M.D. Raghavan

JUDGMENT

(Order of the Court was delivered by R.Subbiah,J.)

Not being satisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal (Chief Judge, Court of Small Causes, Chennai), in and by the award, dated 15.12.2012, made in M.C.O.P. No.1016 of 2009, the claimants have come forward with the present Appeal seeking for enhancement of the award.

2.Since the present Appeal has been filed only questioning the quantum of compensation, we are not traversing into the other aspects of the award passed by the Tribunal.

3.The claimants herein are the wife and parents of the deceased N.Muthukumar, who died in the motor accident. The averments set out in the Claim Petition are as follows :-

i)On 12.03.2009, at about 17.00 hours, when the said N.Muthukumar, was riding a two wheeler bearing Regn. No.TN-04-L-1802 along with one Bhaskaran as Pillion rider, from east to west on the Indira Gandhi 1st Main Road, a Piaggio Delivery Van bearing Registration No.TN- 22-AY-6759, came from the opposite direction in a rash and negligent manner and hit against the two wheeler, as a result of which, the rider of the two-wheeler sustained fatal injuries and the pillion rider sustained grievous injuries. Immediately, they were taken to the Kamatchi Memorial Hospital, at Pallikaranai, Chennai. Inspite of the treatment, the rider (said N.Muthukumar) succumbed to the injuries and died on the next day i.e. 13.03.2009 in the hospital. The legal heirs of the said Muthukumar viz., the the claimants herein have made a claim as against the owner as well as the insurer of the offending vehicle.

ii)So far as the quantum of compensation is concerned, it is the case of the claimants that at the time of accident, the deceased Muthukumar was aged 25 years and was working as a Manager in a Private Concern, viz., M/s. Promise Consultancy and Services, Alandur, Chennai, and was earning a sum of Rs.15,000/- per month. In the accident, the claimants have lost their only bred-winner. On the above basis, the claimants have made a claim for a sum of Rs.34,00,000/- as compensation.

4.Before the Tribunal, the first respondent herein, who is the owner of the offending Van, filed a counter statement, inter alia contending that the accident had occurred owing to the fault of the deceased, who rode the two wheeler in a rash and negligent manner, hence, they are not liable to pay the compensation amount.

5.The second respondent/Insurance Company resisted the claim petition by filing a counter statement, inter alia stating that, it was the deceased, who contributed to the accident, inasmuch as the deceased rode the two wheeler, recklessly, without observing the traffic rules, and therefore, the Insurance Company cannot be mulcted with any liability to pay compensation. That apart, the compensation amount claimed by the claimants is excessive and exorbitant, and therefore, the Insurance Company prayed for dismissal of the claim petition.

6. Before the Tribunal, in order to prove the averments set out in the Claim Petition, the first claimant/wife of the deceased examined herself as P.W.1 besides examining another witness Baskaran, the Pillion rider of the Two Wheeler, as P.W.2. and marked eight documents as Exs. P1 to P.8. On behalf of the respondents, neither any witnesses were examined nor any documents were marked.

7. The Tribunal, on appreciation of both oral and documentary evidence, has come to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the Van insured with the 2nd respondent. By coming to such a conclusion, the Tribunal has made the calculation under different heads and passed an award for a total sum of Rs.9,02,400/- as compensation. Finding the compensation amount as insufficient, the present Appeal has been filed by the claimants/appellants, as stated above.

8.Pending the appeal, the 2nd appellant/2nd claimant ie., the father of the deceased Muthukumar, died on 29.12.2016 and to that effect, a memo 09.03.2018 has been filed by the appellants 1 & 3. The memo filed by the appellants 1 & 3 is recorded.

9. It is submitted by the learned counsel appearing for the appellants/claimants that in order to prove the income of the deceased, the Salary Certificate issued by the company was marked as Ex.P.8, wherein it is specifically mentioned that the deceased was earning a sum of Rs.15,000/- per month. Whereas, the Tribunal ignored the same and fixed only a meager sum of Rs.4,500/- as monthly income and based on the same arrived at a sum of Rs.8,42,400/- towards the Pecuniary Loss, which is extremely on the lower side.

10. It is the further contention of the learned counsel for the appellants/claimants that the amount awarded by the Tribunal towards Loss of Consortium, Loss of Love and Affection and Funeral Expenses are also very meager and it warrants enhancement. It is further contended that the Tribunal failed to award any amount towards Loss of Estate. Thus, the learned counsel for the appellants/claimants prays for proper enhancement of the compensation amounts.

11. Refuting the above submission, the learned counsel for the second respondent/Insurance Company submitted that it is not disputed that the claimants have marked the Salary Certificate of the deceased, viz., Ex.P.8, as a proof to show that the deceased was earning a sum of Rs.15,000/- per month; however, the fact remains that the Manager of the Promise Consultancy, where the deceased was employed, was not examined to prove genuineness of Ex.P.8. Since the veracity of Ex.P.8 was not tested, the Tribunal rightly took note of the same and fixed the monthly income of the deceased at Rs.4,500/- and by adding 30% towards his future prospects, deducting 1/3rd amount towards personal expenses and applying multiplier of '18', arrived at a sum of Rs.8,42,400/- under the head Pecuniary Loss and the same requires no interference. Like the same, the compensation awarded under the other three heads, viz., i) Loss of Consortium, ii) Loss of Love and Affection and iii) Funeral Expenses are just and reasonable and requires no interference,

and therefore, he prays for dismissal of the Appeal.

12. Keeping the submissions made on either side, We have carefully gone through the entire materials placed on record. Though the claimants have stated that the deceased was working as Manager in a Private Concern (viz., M/s. Promise Consultancy and Services) and was earning a sum of Rs.15,000/- per month, and marked Ex.P.8, Salary Certificate, the Employer of the deceased was not examined and in the absence of oral evidence of the employer of the deceased, Ex.P.8 cannot be relied upon. The Tribunal has fixed the monthly income at Rs.4,500/- and arrived at a sum of Rs.8,42,000/- towards loss of income. However, considering the present day cost of living, the sum of Rs.4,500/- fixed by the Tribunal as monthly income of the deceased and addition of 30% towards future prospects appears to be on the lower side and hence, we feel that a sum of Rs.7,500/- could be fixed as monthly income and 40% amount could be added towards future prospects, to arrive at a just and proper compensation under the head of loss of income. As such, if a sum of Rs.7,500/- is taken as monthly income, 40% amount works out to Rs.3,000/-.Then, the total monthly income of the deceased comes to Rs.10,500/-. If 1/3rd amount is deducted towards personal expenses, the monthly contribution to the family comes to Rs.7,000/- (10,500 - 3,500) . The deceased was aged 25 yeas at the time of accident; Hence, the correct multiplier that has to be applied in this case is '18'. If the multiplier 18 is applied, the total loss of income works out to Rs.15,12,000/-.

13.As rightly pointed out by the claimants, the sum of Rs.30,000/- awarded by the Tribunal towards the Loss of Consortium appears to be on the lower side. Hence, the same is hereby enhanced to Rs.40,000/-. Similarly, the Tribunal has awarded only a sum of Rs.20,000/- towards Love and Affection, which deserves to be enhanced and we feel that a sum of Rs.40,000/- could be awarded towards Loss of Love and Affection to the claimants, which would meet the ends of justice. Likewise, the sum of Rs.10,000/- awarded towards Funeral Expenses is low and the same is enhanced to Rs.15,000/-. As rightly pointed out by the learned counsel for the claimants/appellants, the Tribunal ought to have awarded some amount towards the Loss of Estate. Therefore, we award a sum of Rs.15,000/- towards Loss of Estate. Consequently, the total compensation amount of Rs.9,02,400/- is hereby modified and enhanced to Rs.16,22,000/-. The break up details of the modified compensation amount are as follows:-

Loss of income (7,000/- x 12 x 18)	:	Rs.15,12,000.00
Loss of consortium to first claimant/wife	:	Rs. 40,000.00
Loss of love and affection	:	Rs. 40,000.00
Funeral Expenses	:	Rs. 15,000.00
Loss of Estate	:	Rs. 15,000.00
		Rs.16,22,000.00

14. In the result, the Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal is modified and enhanced from Rs.9,02,400/- to Rs.16,22,000/-, out of which the 1st claimant/wife is entitled to Rs.13,00,000/- and the 3rd claimant/mother is entitled to the balance amount of Rs.3,22,000/-. The second respondent/Insurance Company is directed to deposit the enhanced compensation amount with interest at 7.5% per annum from the date of petition till the date of deposit, after adjusting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants 1 & 3 are entitled to withdraw their share amounts with proportionate accrued interest, by making necessary application before the Tribunal. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To
1.The Chief Judge,
Court of Small Causes,
Motor Accident Claims Tribunal, Chennai.

2. The Reliance General Insurance Co. Ltd.,
Second Floor, Balmer Lawrie House,
No.628, Anna Salai, Chennai - 600 018.

Copy to:

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

+1 cc to M/s.M.Swamikkannu Advocate sr 18279
+1 cc to M/s.M.B.Gopalan Advocate sr 18930

C.M.A.No.1375 of 2013

mr(co)
aa27/06/2018