IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2607 of 2018

1.Senbagavalli

2.Minor. Surya

3.Minor. Manikandan

4.Thathan .. Appellants/Petitioners

(Minors 2 & 3 are represented by their mother 1st appellant)

Vs.

1.V.Mohanraj

2.M/s.United India Insurance Company Ltd.,
O/o. Oriental Theatre Complex,
No.77-Arunachala Aasari Street,
Salem - 636 001.

3.M/s.Oriental Insurance Company Ltd, (Omalur),
O/o.Divya Towers, 2nd Floor,
Fort Main Road, Salem - 636 009. .. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 09.01.2018 made in M.C.O.P.No.395 of 2013 on the file of Motor Accidents Claims Tribunal, Special District Court, Salem.

For Appellants : Mr.S.P.Yuaraj
For R2 : Mr.T.Ravichandran
For R3 : Mr.J.Chandran

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation of the award dated 09.01.2018 made in M.C.O.P.No.395 of 2013 on the file of Motor Accidents Claims Tribunal, Special District Court, Salem.

2.The appellants are the claimants in M.C.O.P.No.395 of 2013 on the file of Motor Accidents Claims Tribunal, Special District Court, Salem. They filed the above said claim petition claiming a sum of Rs.12,00,000/- for the death of one Sathish, who died in the accident that took place on 06.01.2003.

3.The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred only due to rash and negligent driving by the rider of the motor cycle bearing Registration No.TN 30 V 4870 belonging to the first respondent. The Tribunal has fixed 25% contributory negligence on the part of the deceased based on the evidence of R.W.4/Investigating Officer of the second respondent and directed the second respondent/Insurance Company to pay 75% of the award amount (Rs.8,79,931/-) as compensation to the appellants.

4.The appellants have come out with the present appeal challenging portion of the award passed by the Tribunal fixing 25% contributory negligence on the part of the deceased and for enhancement of compensation.

5.The learned counsel appearing for the appellants contended that the deceased was working as a coolie and was earning a sum of Rs.500/- per day and the Tribunal erred in fixing notional income of the deceased at Rs.6,000/- per month, which is meager. The Tribunal failed to consider the judgments of the Hon'ble Apex Court and this Court while fixing notional income of the deceased. The claimants are 5 in number. The Tribunal erred in deducting 1/3rd instead of 1/4th towards personal expenses. The Tribunal fixed 25% contributory negligence on the part of the deceased on the ground that R.W.4/Investigating Officer of the second respondent reported that the deceased was smelling alcohol. There is no evidence from any Doctor to show that deceased was under the influence of alcohol and was unstable at the time of the accident and prayed for setting aside the portion of the award fixing contributory negligence of 25% on the part of the deceased and prayed for enhancement of compensation.

6.Per contra, the learned counsel appearing for the second respondent/Insurance Company contended that the second respondent has proved that the deceased was smelling alcohol by examining R.W.4/Investigating Officer. In view of the same, the Tribunal fixed 25% contributory negligence on the part of the deceased. The amounts awarded by the Tribunal under different heads are not meager and there is no reason to enhance the compensation and prayed for dismissal of the appeal.

7.Heard the learned counsel appearing for the appellants as well as the second respondent and perused all the materials available on record.

8.The contention of the learned counsel appearing for the appellants that the Tribunal has fixed a sum of Rs.6,000/- per month as notional income of the deceased is meager and without merits. He further contended that the deceased worked as a coolie and was earning a sum of Rs.500/- per day. But no acceptable evidence was produced to substantiate the said claim. In such circumstances, the Tribunal has fixed a sum of Rs.6,000/- per month as the notional income of the deceased, which is proper. The contention of the learned counsel appearing for the appellants that the Tribunal erred in deducting 1/3rd instead of 1/4th towards personal expenses, as there are 5 claimants has considerable force. The deceased was aged 32 years at the time of accident and the multiplier applicable is '16'. In view of the same, the amount awarded by the Tribunal towards loss of income is modified as follows:

Rs.6,000/- + Rs.2,400/- (40% of Rs.6,000/-) X 3/4 X 12 X 16 = Rs.12,09,600/-.

The Tribunal has fixed 25% of contributory negligence on the part of the deceased based on the evidence of R.W.4/Investigating Officer. The Tribunal erred in fixing 25% of contributory negligence on the part of the deceased only based on the evidence of R.W.4/Investigating Officer, in the absence of any medical report to show that the deceased was drunk or unstable and under the influence of alcohol at the time of accident. The smelling of alcohol is not the proper reason for attributing contributory negligence on the part of the deceased. In view of the same, the said finding of the Tribunal is set aside and entire negligence is fixed on the part of the driver of the vehicle belonging to the first respondent and the second respondent/Insurance Company as Insurer is liable to pay the entire compensation to the appellants.

9.As far as quantum of compensation is concerned, the Tribunal has awarded a sum of Rs.8,06,400/- towards loss of income and the same is hereby enhanced to a sum of Rs.12,09,600/-. The amounts awarded by the Tribunal in all other heads are fair and reasonable and the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of Income	8,06,400/-	12,09,600/-	enhanced
2.	Funeral Expenses	15,000/-	15,000/-	confirmed
3.	Loss of Estate	15,000/-	15,000/-	confirmed
4.	Loss of Dependency	40,000/-	40,000/-	confirmed
5.	Medical Bills	3,531/-	3,531/-	confirmed
	Total	8,79,931/-	12,83,131/-	Enhanced by Rs.4,03,200/-

10.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.8,79,931/- is hereby enhanced to a sum of Rs.12,83,131/- with interest and costs. The second respondent/Insurance Company is directed to deposit the enhanced award amount, with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the first appellant is entitled to a sum of Rs.6,83,131/- as compensation being the wife of the deceased; the appellants 2 and 3 are entitled to a sum of Rs.2,25,000/- each, being the children of the deceased and the fourth appellant is entitled to a sum of Rs.1,50,000/- as compensation, being the father of the deceased. On such deposit, the appellants one and four/claimants are permitted to withdraw their respective share amount, with interest and costs. The share of the minor appellants 2 and 3 is directed to deposited in any one of the nationalized bank as fixed deposit, till they attain majority. The first appellant/claimant, being the mother of the minor appellants 2 and 3, is permitted to withdraw the interest amount once in every three months for the welfare of the minor appellants/claimants 2 and 3, till they attain majority. The appellants/claimants shall pay the necessary Court fee, if any for the enhanced award amount. No costs.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

To

1. Motor Accidents Claims Tribunal,
Special District Judge,
Salem.

2. The Section officer
   VR Section
   High Court, Madras 104.

+1 CC to Mr.S.P.Yuaraj, Advocate sr 86484.
+1 CC to Mr.J.Chandran, Advocate sr 86884.

C.M.A.No.2607 of 2018

NMI(CO)
SP(24/04/2019)