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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.03.2019

CORAM

THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

C.M.A. No.2756 of 2008

1. Petha Gounder
2. Muthu
3. Mathappan
4. Arumugam
5. Veerammal
6. Periyasamy
7. Selvaraj

... Appellants/Petitioners

Versus

1. B.Kamal Basha
2. Ganash

3. The New India Insurance Co. Ltd.,
No.92, Dr.Thirumalai Plaza, 1st Floor,
New Dharapuram Road,
Palani-624601.

... Respondents/Respondents

Prayer: This Appeal is filed under Section 173 of Motor Vehicles Act, 1988 to set aside the Judgment and Decree passed in M.C.O.P.No. 297 of 2004 dated 05.02.2008 on the file of Motor Accidents Claims Tribunal, (Fast Track Court No: 4) at Bhavani.

For Appellant

:Mr.Ma.P.Thangavel

For Respondent 3

:Mr.N. Vijayaraghavan
NA for R2

J U D G M E N T

This appeal has been filed against the Judgment and Decree passed in M.C.O.P.No. 297 of 2004 dated 05.02.2008 on the file of Motor Accidents Claims Tribunal, (Fast Track Court No: 4) at Bhavani.

2. On 30.01.2004 at about 10.00 p.m when the deceased P.Ponnukunjan Gounder along with one Palanisamy, were travelling in a Tempo Van from Sunthipalayam to Anthiyur a Tata Van bearing



Registration No.TN-57-A-5252 belonging to the 2nd respondent herein came in the opposite direction at a very high speed and dashed on the wall at the road. In the result the deceased Ponnukunjan Gounder and another person Palanisamy died in the spot itself. The accident occurred due to the negligent attitude of the driver of the Tata Van. Therefore, the legal heirs of the deceased P.Ponnukunjan Gounder and Palanisamy filed M.C.O.P.No.297 of 2004 on the file of the Motor Accidents Claims Tribunal, (FTC-4) at Bhavani Erode, District, seeking compensation for a sum of Rs.5,00,000/- The Tribunal, on a consideration of oral and documentary evidence, has awarded a sum of Rs.3,06,400/- payable with interest at the rate of 7.5% per annum.

3. Challenging the quantum of the award amount, the appellant has filed this appeal.

4. The learned counsel for the appellants contend that the deceased was the sole bread winner of the family and after his demise his family members was in a indigent circumstances and prays to enhance the award amount passed by the Tribunal.

5. The learned counsel for the respondent/Insurance contends that, the driver of the alleged vehicle does not possess valid driving license at the time of the accident. Moreover the vehicle involved in the accident is only to carry goods and the deceased persons are not the owner of the vehicle, either they are not passengers of the vehicle and they have provided any documents to prove the occupation of the deceased. Hence, he prays to dismiss the petition.

6. Heard both sides and perused the materials available on record.

7. Upon perusing the entire award of the Tribunal, it is seen that the Tribunal entered into its findings based on oral and documentary evidence before it and has not awarded a just and fair compensation, which need interference by this Court in this appeal and the quantum of compensation assessed by the Tribunal, needs to be enhanced by modifying the amount in all heads except the head Loss of Love and Affection.

8. Though the deceased was working as Collie and earning Rs.5,000/- per month but the Tribunal has taken Rs.3,600/- as Notional income without any basis. As per the Rulings of the Hon'ble Apex Court in Sri Ramachandrappa Case reported in 2011 (2)TNMAC 190(SC) for Coolie workers Rs.4,500/- was taken as notional income.



9. Though the deceased was aged about 60 years and as per Sarala Varma case the correct multiplier is 9 and as per Pranab Seethy case 10% should be added for future prospectus. Therefore Rs.45,00+450 = 4,950/- p.m x 12 x 9 and by deducting 1/5 towards personal expenses it comes to Rs.4,27,680/-.

10. For Love and affection totally 7 persons granted at Rs.10,000/- each which comes to Rs.70,000/- Tribunal awarded for Transport expenses at Rs.1,000/- which is enhanced to Rs.10,000/- and in respect of loss of estate there was no award and this Court awarded Rs.15,000/- in this head therefore, for Loss of Estate Rs.15,000/-.

11. Thus, the award amount is enhanced to Rs.5,37,680/- from 3,06,400/- under the following heads.

S.No	Particulars	Amount granted by the Tribunal	Amount awarded by this Court
1	Loss of dependency	Rs.3,06,400/-	Rs.4,27,680/-
2	Loss of Love & Affection	Rs.70,000/-	Rs. 70,000/-
3	Funeral Expenses	Rs.5,000/-	Rs.15,000/-
4	Loss of Estate	-NIL-	Rs.15,000/-
5	Transportation Charge	Rs.1,000/-	Rs.10,000/-
	Total	Rs.3,06,400/-	Rs.5,37,680/-

12. In the result,

- (a) this appeal is partly allowed.

(b) the respondent/Insurance Company is directed to deposit the enhanced amount, less the amount, if any, already deposited, with interest at the rate of 7.5% within a period of 8 weeks from the date of receipt of copy of this Judgment and recover from the owner of the vehicle/ second respondent herein.

(c) On such deposit the appellants are directed to file proper application before the Tribunal and withdraw their respective share amount as per the directions of the Tribunal.

(e) There will be no order as to costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar



To.

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- 1.The Motor Accident Claims Tribunal,
No.4 Fast Track Court, Bhavani, Erode District.
- 2.The Section Officer,
VR Section High Court, Madras.(2 Copies)

+1cc to Mr.M.B.Gopalan, Advocate Sr.23320
+1cc to Mr.Ma.P.Thangavel, Advocate Sr.23771

C.M.A. No.2756 of 2008

sr[co]
srg 17/10/2019