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THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.02.2019

CORAM :

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A.No.1307 of 2013

1.Pushpavalli

2.M.Kavitha

3.M.Karthick (minor rep. by her mother Pushpavalli) ... Appellants

Vs

1.M.Manimaran

2.ICICI Lombard General Ins. Co.Ltd.,
84/85, Walltax Road,
Arihant Plaza,
Chennai - 600 003. ... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 against the judgment and decree dated 05.02.2013 made in MACTOP.NO.777 of 2012 on the file of the IV Judge, Small Causes Court (Motor Accidents Claims Tribunal) at Chennai.

For Appellant : Mr.Varadha Kamaraj
R1 : Ex-parte (before Tribunal)

For R2 : Mrs.R.Sreevidhya

J U D G M E N T

The appellant/petitioner has preferred the present appeal, aggrieved by the order of the learned IV Judge, Small Causes Court (Motor Accidents Claims Tribunal) at Chennai in MCOP No. 777 of 2012 dated 05.02.2013 against the award of Rs.5,90,000/-

2. Heard Mr.Varadha Kamaraj, learned counsel appearing for the appellant and Mrs.R.Sreevidhya, learned counsel appearing for the second respondent.

3. The brief facts of the case are as follows:-
On 06.07.2011 at about 18.10 hours, while the deceased

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person was riding the scooty bearing Reg. No. TN 20 AS 6096 in GNT Road, Moolakadi and the driver of the tanker lorry bearing Reg. No.TN 33 E 8996 driven the same direction in a rash and negligent manner and hit the deceased person. As such, the deceased sustained grievous injuries and he call the ambulance. GNT Road Traffic Investigation Wing Police has registered a case in Cr.459/GNT311 under Sections 279 & 304 (A) IPC. The FIR has been marked as Ex.P.1. Ex.P.2 is the Postmortem report, it is evident that the death due to effect of injuries. Ex.P.3 is the death certificate and Ex.P.5 is the death report. Hence, the deceased died on the spot itself. The evidence of P.W.1 and evaluation of Exs.P2, P3 and P5 the nexus between the cause of death and the injuries sustained by the deceased in the road accident is absolutely proved on the petitioners' side. Ex.P4 is the legal heir certificate shows that the first petitioner is the wife of the deceased and the second and third petitioners are daughter and son of the deceased respectively. The first respondent is the owner of the lorry and the second respondent is the insurance company. They are liable to pay compensation to the petitioners therefore, the petitioners claimed a total compensation of Rs.10,00,000/- from the respondents.

4. Per contra, the third respondent/Insurance Company filed its counter statement stating that the accident occurred due to the negligence on the part of the deceased person. The petitioners has to prove the insurance policy of the offending vehicle and they are the only legal heirs of the deceased. The respondent denied the alleged age, avocation and monthly income of the deceased and put the petitioners to strict proof. The offending vehicle was driven by one T.Ramadoss (driver in charge of the vehicle at the time of accident) without valid driving licence at the time of accident. The petitioners are directed to submit that the proof of the offending vehicle was plying with a valid registration certificate, permit and fitness certificate on the date of accident.

5. The Tribunal after perusing the evidences and pleadings came to the conclusion that the negligence was on the part of the lorry driven by the first respondent and fixed compensation for a sum of Rs.5,90,000/-

6. The Tribunal awarded a sum of Rs.5,90,000/- as compensation to the claimant, aggrieved over the said findings on the quantum of compensation, the claimant/appellants have come forward with the present appeal.

7. The grounds raised in the appeal is that the Tribunal has failed to consider that the deceased was a Carpenter cum Business (leather Goods) and erroneously fixed the income of the deceased as Rs.4,500/- per month. But the fact that the

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Carpenter earns Rs.500/- to Rs.600/- per day and the Tribunal ought to have fixed the income as Rs.15,000/- per month as claimed in the petition as per evidence of PW1. The Tribunal failed to consider the future prospects of the deceased. Further erred in awarding a sum of Rs.10,000/- for loss of love and affection.

8. The learned counsel for the appellant submitted that the offending vehicle belongs to the first respondent and the same was validly insured with the second respondent and also furnished the policy number as 3003/62142296/00/B00 and period of validity as 23.11.2010 to 22.11.11 which covers the date of accident i.e., 06.07.2011.

9. The learned counsel for the second respondent submitted that Ex.P.2 is the Postmortem Certificate & Ex.P.3 is the Death Certificate, the age of the deceased is mentioned as 40 years. There is no specific age proof filed on the petitioners' side. The compensation fixed by the Tribunal is just and fair.

10. The Tribunal fixed a sum of Rs.4500/- as notional income of the petitioner for the purpose of fixing compensation for the year 2014 and fixing notional income of Rs.4500/- is too low. Therefore, it is just and necessary to fix appropriate notional income by considering various aspects. The Hon'ble Supreme Court in the case of Syed Sadiq Vs. United India Insurance Company, reported in 2014(1) TNMAC 459, fixed the monthly income at Rs.6500/- for a vegetable vendor, who sustained injuries in the accident in the year 2008. In the present case, the deceased person was doing a business, it deems fit to add a sum of Rs.2,000/- taking into account, increase in cost of living since 2008 to 2014, in addition to Rs.6,500/-.

11. The learned counsel for the respondent strongly opposed and pleaded the income may be restricted to Rs.6,500/-, but not more than above sum. Taking into consideration of the facts and circumstances, the cost of living during the year 2008 to 2011, this Court is inclined to re-fix the notional monthly income of the deceased as Rs.7,500/-. Accordingly, the notional income of Rs.4,500/- fixed by the tribunal is set aside and the same is refixed by this Court as Rs.7,500/- per month. The Tribunal has failed to consider the future prospects. The age of the deceased was 40 years. This court is inclined to add 25% towards future prospects (i.e.,7,500/4 =1875) in monthly income as held by the Hon'ble Apex Court reported in 2017-13 SCALE 12 (National Insurance Company Limited Vs. Pranay Sethi), therefore the monthly income of the deceased after adding the future prospects would be a sum of Rs.9375/- (7500+1875).

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12. As the number of dependants are three in the present case, this Court deduct 1/3 towards the personal expenses of the deceased as held in the case of Sarla Verma and others Vs.Delhi Transport Corporation and another reported in 2009 ACJ 1298 SC. After deducting personal expenses of the deceased, the loss of income to the dependants will be a sum of Rs.6,250/- p.m. = (9,375 - 3,125) Therefore the loss of income to the dependants will be a sum of Rs.75,000/- p.a. (6250 * 12). Since the age of the deceased was 40 years at the time of accident, by applying the multiplier "15" as held in Sarla Varma (cited supra). The total loss of income to the dependants of the deceased will be a sum of Rs.11,25,000/-. Therefore this Court determined a sum of Rs.11,25,000/- towards loss of dependency against the sum of Rs.5,40,000/- awarded by the Tribunal.

13. The Tribunal awarded Rs.25,000/- towards loss of consortium to the first petitioner, Rs.20,000/- towards loss of love and affection to the petitioners 2 and 3 and Rs.5,000/- towards Funeral expenses. Since this Court is of the view that the said amounts awarded are very low and this Court enhanced the amounts Rs.40,000/- towards loss of consortium, Rs.50,000/- towards love and affection and Rs.15,000/- towards funeral expenses. However as no amount was awarded towards "Loss of estate" by the Tribunal, a sum of Rs.15,000/-fixed under this captions.

14. Hence the total compensation payable to the claimants are as hereunder

S.No	Heads	Amount awarded by the Tribunal	Amount Awarded by this Court
1	Loss of dependency	Rs.5,40,000/-	Rs.11,25,000/-
2	Loss of consortium	Rs.25,000/-	Rs.40,000/-
3	Loss of love and affection	Rs.20,000/-	Rs.50,000/-
4	Funeral Expenses	Rs.5,000/-	Rs.15,000/-
5	Loss of estate	-	Rs.15,000/-
6	Total	Rs.5,90,000/-	Rs.12,45,000/-

15. The total amount of compensation of Rs.12,45,000/- shall be shared by the appellants 1, 2 and 3 herein in the following manner:-

The mother of the deceased who is the first appellant shall receive a sum of Rs.6,45,000/- the daughter of the deceased who is the second appellants shall receive a sum of Rs.3,00,000/- and the minor son of the deceased who is the third appellant shall receive a sum of Rs.3,00,000/-.

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16. The Insurance Company is directed to deposit the entire amount awarded by this Court along with interest and costs before the Tribunal within a period of four weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any. The interest awarded by the Tribunal at the rate of 7.5% per annum is unaltered and the apportionment shall be as ordered by this Court. On such deposit being made, the Tribunal shall transfer the amount to the claimants bank account through RTGS within a period of one week thereon.

The share in respect of the third appellants who is minor shall be deposited in any one of the Nationalised Banks, in interest bearing Fixed Deposit, till minors attain majority. The 1st appellant being the mother of the third appellant is permitted to withdraw the quarterly interest from the said deposit. The claimants are directed to pay the requisite court fee, if any, within a period of one week from the date of receipt of a copy of this order.

17. In the result the Civil Miscellaneous Appeal is allowed and the award passed by the Tribunal to the tune of Rs.5,90,000/- is enhanced to Rs.12,45,000/-. No costs.

Sd/-
Assistant Registrar(CS-I)

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Sub Assistant Registrar

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To
1.The learned IV Judge,
Small Causes Court
(Motor Accidents Claims Tribunal)
Chennai.

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

+1cc to Mr.K.Varadha Kamaraj, Advocate, S.R.No.11074

C.M.A.No.1307 of 2013

SS(CO)
CB(12/08/2021)

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