IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 08.03.2019

Pronounced on : 19.03.2019

CORAM:

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.1494 of 2011

N.Banumathi ... Appellant/ Petitioner

Versus

1.K.M.Chandran

2.The New India Assurance Co., Ltd.,
1st Floor, No.91, G.N.Chetty Road,
T.Nagar, Chennai - 17.

[R1- exparte in Lower Court] .. Respondents/ respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 29.11.2010 made in M.C.O.P.No.449 of 2007 on the file of the Motor Accident Claims Tribunal, Chief Judge, Court of Small Causes, Chennai.

For Appellant : Mr.S.Gangaram Prasad

For Respondents: Ex-parte before the Tribunal (for R1)

: Mr.Elveera Ravichandran (for R2)

JUDGMENT

Not being satisfied with the quantum of compensation awarded in M.C.O.P.No.449 of 2007 on the file of the Motor Accident Claims Tribunal, Chief Judge, Court of Small Causes, Chennai in and by award dated 11.12.2007, the claimant has filed the present appeal seeking enhancement of the compensation amount.

2.The appellant/claimant is the mother of the deceased by name Babu @ Muthukrishnan. It is the case of the claimant before the Tribunal that the accident took place on 03.12.2006 at about 20.30 hours, when the deceased was riding his Motorcycle bearing Regn.No.TN-01-AB-2435 with a pillion rider. When the vehicle was nearing Poonamallee High Road near Ramakrishna Weigh Bridge, Koyambedu, Chennai, the Lorry bearing Regn.No.TN-28-P-1060 driven by the first respondent came from behind in a rash and negligent manner and dashed against the motorcycle. In the impact, the deceased fell down on his right side and the Lorry ran over the deceased bod and he died. He was 23 years at the time of accident and working as advertisement hoarding erector, earning a sum of Rs.7,500/- per month. Hence, the mother of the deceased has filed the claim petition before the Tribunal, claiming a sum of Rs.8,00,000/- as compensation.

3.In order to substantiate the averments in the claim petition, on the side of the claimant, the claimant examined herself as P.W.1, besides examining the pillion rider M.Devasagayam as P.W.2 and marked eight documents as Ex.P1 to P8. On the side of the respondents, neither oral nor documentary evidence was adduced.

4.After analysing the oral and documentary evidence, the Tribunal has fixed a sum of Rs.4,500/- as monthly income since no documentary evidence was produced by the claimant. Thereafter, by deducting 50% amount towards personal expenses of the deceased, since the decesed died as a bachelor, the Tribunal has fixed a sum of Rs.27,000/- as monthly contribution to the family. Thereafter, by applying the multiplier 14, based on the age of the deceased, who was 23 years old at the time of accident, the Tribunal has awarded a sum of Rs.3,78,000/- towards loss of income.

5.Now, it is the submission of the learned counsel for the appellant/claimant that the sum of Rs.4,500/- fixed by the Tribunal as monthly income is extremely on the lower side and that by fixing a sum of Rs.7,500/- as monthly come of the deceased, as claimed in the claim petition, the compensation amount has to be enhanced. Further, he submitted that the Tribunal adopted multiplier 14 instead of 18, which is also erroneous one. The Tribunal erroneously relied on the decision of the Honourable Supreme Court in the case of (Shyamwati Sharma and others Vs. Karam Singh and others) reported in 2010 AIR SCW 4391 and adopted multiplier 14. The fact remains that the deceased in that case was aged 44 years at the time of accident and therefore, the ratio laid down in the said decision ought not to have been relied on by the Tribunal. Thus, taking note of the age of the deceased at the time of accident as 23 years, the Tribunal ought to have fixed the multiplier 18 instead of 14, which would be the fair and reasonable compensation.

6.But, the learned counsel appearing for the second respondent/Insurance company has submitted that in the absence of any evidence with respect to the income of the deceased the Tribunal is justified in taking a sum of Rs.4,500/- as monthly income and it cannot be said to be on the lower side.

7.Heard the counsel for both sides and perused the materials available on record.

8.After perusing the records, it is an admitted fact that the deceased was 23 years at the time of accident and he was employed as a advertisement hoarding erector. According to the claimant, the deceased died at a young age as a bachelor. Therefore, taking into account the age of the claimant, the Tribunal ought to have adopted multiplier '18' instead of adopting multiplier '14' as has been held by the Honourable Supreme Court in the case of Sarla Verma and others Vs.Delhi Transport Corporation and another reported in 2009 ACJ 1298 SC. Therefore, the Tribunal committed an error in adopting the multiplier '14' to determine the loss of earning.

9.Further, the Tribunal did not take note of the future prospects of the claimant. Admittedly, the claimant was 23 years at the time of accident and had he been alive, he could have earned more than what he was earning at the time of accident. Keeping the above in view, this Court is of the view that even in the absence of any documentary evidence to prove the income of the deceased, a notional sum of Rs.5,000/- could be taken as the monthly income of the deceased. If 40% of the income is taken as future prospectus, as has been held by the Honourable Supreme Court case of (National Insurance Company Limited Vs. Pranay Sethi), reported in 2017-13 SCALE 12, the notional income of the deceased could be arrived at Rs.7,000/-. If 50% deduction is given, the monthly loss of income of the deceased could be arrived at Rs.3,500/- per month. Thus, the actual loss of income of the deceased could be arrived at Rs.3,500 X 12 X 18=7,56,000/- which will be the fair and reasonable amount.

10.As far as non-pecuniary compensation awarded by the Tribunal, the Tribunal has awarded a sum of Rs.2,000/- towards transportation and funeral, which in the opinion of this Court is meager and it has to be enhanced to Rs.15,000/-. Further, a sum of Rs.10,000/- was awarded towards loss of love and affection, which is also meager. This in the opinion of this Court is meager. Taking into account the young age at which the claimant had lost her son, the compensation awarded towards love and affection is hereby enhanced to Rs.50,000/-. Apart from this, the claimant is also entitled to a sum of Rs.15,000/- towards loss of estate, which the Tribunal failed to award.

Description	Amount awarded by Tribunal	Amount awarded by this Court
Loss of income	Rs.3,78,000/-	Rs.7,56,000/-
Love and affection	Rs.10,000/-	Rs.50,000/-
Funeral and Transportation	Rs.2,000/-	Rs.15,000/-
Loss of estate	-	Rs.15,000/-
Total	Rs.3,90,000/-	Rs.8,36,000/-

11.In the result, this Civil Miscellaneous Appeal is allowed and the compensation amount of Rs.3,90,000/- awarded by the Tribunal is hereby enhanced to Rs.8,36,000/-, with interest at the rate of 7.5% per annum, from the date of petition till the date of realisation. The second respondent/Insurance company is directed to deposit the enhanced award amount along with interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this Judgement. On such deposit being made, the appellant/claimant is permitted to withdraw the amount along with interest and costs, after adjusting the amount if any, already withdrawn. The appellant is directed to pay necessary Court fee, if any, on the enhanced compensation. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

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

2. The Section Officer,
V.R. Section, High Court, Madras - 104.

+1cc to Mr.G.Balaji prasad , Advocate SR.No. 25449
+2ccs to Mrs.Elevana ravindran, Advocate SR.No. 25817 21894

CMA.No.1494 of 2011

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A.SK(19/09/2019)