IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.02.2019

CORAM :

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CMA.NO.1850 OF 2011

1.S.Phelominal
2.S.Amalnathan (minor)
3.S.Remala (minor)
(Minors rep.by mother and natural guardian the first Appellant herein all are residing at No.3/196, Kambar Street, Mondiamman Nagar, Redhills, Chennai -52) ... Appellants/Claimants

Versus

1. K.Balakrishnan

2. United India Insurance Company Ltd., No.24, 3rd Floor, Rattan Bazaar, Chennai - 600 003. Now Operating from Silingi Buildings, No.134, Greams Road, Chennai - 6. ... Respondents/Respondents

[R1 was set exparte in Lower Court]

Prayer :

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Award dated 06.08.2010 passed in M.C.O.P.No.4616 of 2006, on the file of the Motor Accidents Claims Tribunal, Chief Judge, Court of Small Causes, Chennai.

For Appellant : Mr.S.Gangaram Prasad

For Respondents : Exparte (for R1)

: Mr.S.Arunkumar (for R2)

J U D G M E N T

The appellants are the claimants in MCOP No. 4616 of 2006 before the Tribunal. They have filed the present appeal, seeking enhancement of compensation awarded in the Judgment dated

06.08.2010 passed in M.C.O.P.No.4616 of 2006, on the file of the Motor Accidents Claims Tribunal, Chief Judge, Court of Small Causes, Chennai.

2.The first claimant is the wife of the deceased Selvakumar, the second and third claimants are Children of the deceased. The deceased was aged about 39 years, at the time of the accident. He was the Proprietor of Jesuraj Gift Articles Shop Nos.393,394,395 and 396, North Fort Road, Chennai and was also owning a shop on the Platform at China Bazaar allotted by Corporation of Chennai and earning a sum of not less than Rs.15,000/- to Rs.20,000/- per month.

3.It is the case of the appellants/claimants that on 11.06.2006 at about 23.45 hours, the deceased (A.Selvakumar) was riding the motorcycle bearing Registration No. TN-20-AX-1854 with a pillion rider and proceeding from south to north on GST Road, Kathipara Junction, Chennai. At that time, the driver of the first respondent's water tanker lorry bearing Registration No.TN-72-Z-7500 came from the opposite direction in a rash and negligent manner and dashed against the motorcycle of the deceased. As a result, the rider of the motorcycle sustained grievous injuries and later succumbed to the same on the way to the hospital. According to the appellants/claimants, the accident occurred only due to the rash and negligent driving of the driver of the said lorry, and that, since, the said lorry was insured with the second respondent/Insurance Company, both the owner of the lorry bearing Regn. No. TN-72-Z-7500 and its insurer are liable to pay compensation to them. Therefore, as legal heirs of the deceased, they have filed the claim petition claiming a sum of Rs.25,00,000/- as compensation for the death of A.Selvakumar.

4.The owner of the said lorry remained absent before the Tribunal, and therefore, he was set ex-parte.

5.The second respondent/ Insurance Company filed the counter statement repudiating the averments made in the claim petition. In particular, the second respondent denied the age, occupation and income of the deceased. Further, the second respondent also contended that the deceased are not dependents of the deceased and prayed for dismissal of the claim petition.

6.Before the Tribunal, on the side of the appellants/claimants, the wife of the deceased examined herself as PW1 and and an eye witness to the occurrence one Anthonysamy was examined as PW.2 and Ex's.P1 to P10 were marked. On behalf of the respondents side, neither oral nor documentary evidence was adduced.

7.After going through the oral and documentary evidence placed, the Tribunal held that the accident occurred only due to the rash and negligent driving of the driver of the first respondent. Ultimately, the Tribunal awarded a sum of Rs.7,45,000/- as compensation for the death of one A.Selvakumar.

8.Not being satisfied with quantum of compensation awarded by the Tribunal, the legal heirs of the deceased/appellants have preferred this present appeal before this Court.

9.At the outset, the finding rendered by the Tribunal that the Insurance Company and the owner of the lorry are liable to pay compensation amount to the appellants/claimants has not been assailed before this Court and therefore it attained finality.

10.The learned counsel appearing for the appellants/claimants would contend that the claimants have produced Ex.P8, Life Insurance Policies in the name of the deceased and also produced Ex.P9/Sale deed to show that the deceased purchased immovable property in his name. These documents were filed to show that the deceased was resourceful enough and was earning considerably. However, the Tribunal failed to consider these documents and awarded only a sum of Rs.7,20,000/-. Further, the Tribunal erroneously fixed the income of the deceased at Rs.6,000/- per month even though it was established that the deceased was the Proprietor of a Gift Articles Shop and earning a sum of Rs.15,000/- to Rs.20,000/- per month. According to the claimants, the Tribunal ought to have fixed the monthly income of the deceased atleast at Rs.10,000/- per month. Further, the deceased was 39 years at the time of his death and therefore, the multiplier '15' adopted by the Tribunal is incorrect, instead multiplier '16' ought to have been adopted by the Tribunal. Further, the amount awarded towards loss of consortium, loss of estate, loss of love and affection, loss of expectation of life etc., are meager and the compensation awarded thereof is required to be enhanced.

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

12.It appears from the record that the age of the deceased was 39 at the time of accident. Taking into consideration the age of the deceased at the time of accident, multiplier 15 has been rightly adopted by the Tribunal and it is in tune with the decision of the Honourable Supreme Court in Sarla Verma and others Vs.Delhi Transport Corporation and another reported in 2009 ACJ 1298 SC. Further, the claimants did not produce any evidence to show the actual income of the deceased such as income tax returns etc., and in the absence of the same, this Court is of the view that the notional income fixed by the Tribunal at Rs.6,000/- and determination of compensation at Rs.7,20,000/- is proper and it is hereby confirmed.

13.However, taking into account the age of the deceased as 39, the Tribunal ought to have awarded some amount towards future prospects, which the Tribunal did not award. Therefore, taking note of the age of the deceased and his prospectus to earn more had he been alive, this Court is of the view that 40% of income can be taken as future prospectus as held by the Constitution Bench of the Honourable Supreme Court of India in the case of National Insurance Company Limited Vs. Pranay Sethi and others reported in 2017 (2) TN MAC 601, Accordingly, if 40% of the income is taken as future prospectus, the income of the deceased can be fixed at Rs.8,400/- (Rs.6,000/- + Rs.2,400/-) After deducting 1/3rd towards personal expenses, remaining 2/3 rd shall be fixed as loss of income to the family which works out to Rs.5,600/- (one third of Rs.8,400/-). Accordingly, the loss of income of the deceased is re-calculated at Rs.5,600 X 12 X 15 = Rs.10,08,000/- which will be the fair and reasonable amount towards loss of income of the deceased. In addition to the above said amount this Court feels to enhance the amount under the head of loss of consortium for the first appellant/claimant from Rs.10,000/- to Rs.40,000/- taking into account of her young age at the time of death of the deceased. Similarly, the amount awarded towards Transportation of dead body from hospital and funeral expenses at at Rs.5,000/- is hereby enhanced to Rs.15,000/- each. Further, the sum of Rs.10,000/- awarded by the Tribunal for the loss of love and affection for the claimants 2 and 3, who have lost their father at the young age is extremely on the lower side. Considering the same, a sum of Rs.25,000/- each is hereby awarded.

14.Accordingly, the award amount of Rs.7,20,000/- passed by the Tribunal under various heads is hereby enhanced to Rs.11,28,000/- (Rupees Eleven Lakhs and Twenty eight thousand Only), the break-up details of the modified compensation amount are as follows:-

Description	Amount awarded by Tribunal	Amount awarded by this Court
Transportation of Body from Hospital & Funeral expenses	Rs.5,000/-	Rs.15,000/-
Loss of Pecuniary benefits on account of death of deceased	Rs.7,20,000/-	Rs.10,08,000/-
Loss of consortium to the first petitioner	Rs.10,000/-	Rs.40,000/-
Loss of Estate	-	Rs.15,000/
Loss of Love & Affection and Mental Agony	Rs.10,000/-	Rs.50,000/- (Rs.25,000 x 2)
Total	Rs.7,45,000/-	Rs.11,28,000/-

15.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation amount of Rs.7,45,000/- awarded by the Tribunal is hereby enhanced to Rs.11,28,000/-, along with interest at the rate of 7.5% per annum, from the date of petition till the date of realisation. The first and second respondents are liable to pay the compensation to the appellants/claimants, together with interest of 7.5%, within a period of eight weeks from the date of receipt of copy of this Judgment. On such deposit being made, the first appellant is entitled to withdraw her share, as determined in this appeal, and as apportioned by the Tribunal, with accrued interest. The shares of the minors viz., respondents 2 & 3 are directed to be deposited in any one of the nationalized bank, till they attain majority and the mother/first appellant is permitted to withdraw the interest once in three months. The appellants are directed to pay additional Court fee for the enhanced amount. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal,
Cheif Judge, Court of Small Causes, Chennai.

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

+1cc to Mr.S.Arunkumar, Advocate, S.R.No.16219
+1cc to Mr.G.Balaji Prasad, Advocate, S.R.No.16419

CMA.No.1850 of 2011

RSK(CO)
CS/21/10/2019
CS/11/11/2019