

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.09.2018

DELIVERED ON : 06.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.M.A.No.1563 of 2015

1.M.Thiagarajan
2.T.Senthaz

3.T.Thambithurai (Minor) ..Appellants/ Petitioners
(3rd Petitioner being minor,
hence Rep.by his father/next
friend the first petitioner)

Vs

1.M.K.Shanthi
2.M/s.United India Insurance Company Ltd.,
No.134, Third Party Claims Cell HUP,
Greams Road,
Chennai - 600 006.Respondents/ Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 27.10.2014 made in MCOP.No.3337 of 2013 on the file of Motor Accident Claims Tribunal, Chief Small Causes Court, Chennai.

For Appellants : Mr.T.G.Ravichandran

For Respondents: M/s.R.Vijayakamala (for R2)
R1 - Exparte

JUDGMENT

This Civil Miscellaneous Appeal has been preferred by the claimants / appellants against the Judgment and decreetal order made in MCOP.No.3337 of 2013 dated 27.10.2014 by the learned Chief Motor Accident Claims Tribunal (I Court of Small Causes), Chennai.

2.I heard Mr.T.G.Ravichandran, learned counsel for the

appellants and M/s.R.Vijayakamala, learned counsel for the 2nd respondent and perused the entire materials available on record.

3.The appellants herein / claimants filed a claim petition in MCOP.No.3337 of 2013 on the file of the learned Chief Motor Accident Claims Tribunal (I Court of Small Causes), Chennai, claiming compensation of Rs.16,00,000/- for the death of Manjula in a road traffic accident which took place on 18.07.2011 at about 13.00 hours, while she was pedestrian in Pedestrian path of Ennore Express Road from West to East direction near Thiagarajarapuram 8th Street, at that time, the motor cycle bearing registration No.TN-18-F-6192 came from North to South direction was ridden by its rider in a rash and negligent manner and hit the Pedestrian Manjula and the victim / deceased sustained grievous injuries and she died on 19.07.2011 in the Government General Hospital, Chennai.

4.The 1st respondent herein is the owner of the motor cycle bearing registration No.TN-18-F-6192 and the 2nd respondent is the insurer of the said motor cycle bearing registration No.TN-18-F-6192. The 1st respondent was set ex-parte before the Tribunal. The 2nd respondent contested the claim by filing counter statement separately. The 1st claimant is the husband of deceased, the 2nd claimant is daughter of the deceased and the 3rd claimant is the minor son of the deceased.

5.In order to prove the claim, PW1 and PW2 were examined and Exhibits-P1 to P9 were marked on the side of the claimants. RW1 was examined and Exhibits R1 to R3 were marked by the 2nd respondent.

6.The Tribunal after considering the evidence on record and also hearing both sides, held the deceased died only due to rash and negligent driving of the 1st respondent's vehicle and awarded a sum of Rs.7,41,000/- as compensation with interest at the rate of 7.5% per annum and cost and directed the 2nd respondent to pay and deposit the above amount of compensation and recover the same from the 1st respondent.

7.Aggrrieved by the quantum of compensation awarded by the Tribunal, the claimants filed this appeal before this Court. The Tribunal took the monthly income of the deceased as Rs.4,500/- and the relevant multiplier of 16 years of the deceased and after deducting 1/3rd of the income for personal and living expenses of the deceased, determined the loss of income due to the death of the deceased as Rs.5,76,000/-. The Tribunal has awarded a sum of Rs.1,65,000/- in other heads. Totally a sum of Rs.7,41,000/- was awarded.

8.The learned counsel appearing for the appellants/claimants

contends that the Tribunal awarded very meager amount as compensation. The future prospects and other aspects were not considered properly by the Tribunal. Hence, the appellants seek enhancement of the award amount by entertaining the appeal.

9. Per contra, the learned counsel for the 2nd respondent/ Insurance Company contended that the deceased was not employed and she was not earning income as claimed by the appellants. The Tribunal without appreciating the evidence properly wrongly awarded huge amount as compensation and the same is unsustainable. Thus the second respondent seeks dismissal of this appeal.

10. The deceased has stated to be employed as Tailor earning a sum of Rs.12,000/- per month and she was homemaker and taken care of family. However, the petitioners have not produced any proof for income of the deceased. As such taking into consideration, the prevailing market condition, any person employed as a Coolie or Tailor can easily earned as Rs.9,000/- per month. Hence, the monthly income of the deceased is fixed at Rs.9,000/- per month. The age of the deceased being 34 years, following the Pranay Sethi case, if any self employed person aged less 40 years 40% of the income is to be taken as future prospects.

11. Following the Sarala Verma case the multiplier is 18. As such the loss of the dependency is calculated is as follows:

(1) Rs.8,500/-, add 40% of the amount of Rs.3,400/- towards future prospects = Rs.11,900/-

(2) Rs.11,900/- deducted 1/3rd amount of Rs.3,967/- towards personal expenses of the deceased and the balance amount would be Rs.7,933/- as loss of income.

(3) Rs.7,933/- X 12 = Rs.95,196/- X 16 = Rs.15,23,136/- as total loss of income.

12. Following the Hon'ble Apex Court decision reported in 2017 (2) TNMAG (SC) National Insurance Co. Ltd., v. Pranay Sethi and Others, towards loss of estate, loss of consortium and funeral expenses, this Court is inclined to modify the compensation as under:-

Loss of Consortium	= Rs.40,000/-
Loss of Love & Affection	= Rs.15,000/-
Funeral Expenses	= Rs.15,000/-
Transportation	= Rs. 5,000/-

13. Hence, the award of Rs.7,41,000/- granted by the Tribunal is enhanced to Rs.15,98,136/-. The award amount will carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. In view of the above modified award amount, the 2nd respondent / Insurance Company is directed

to deposit the award amount, less the amount if any, already deposited along with accrued interest within a period of six weeks from the date of receipt of a copy of this Judgment and recover the same from the 1st respondent/owner of the vehicle. On such deposit, the claimants are permitted to withdraw the amount awarded as above by filing proper application before the Tribunal. The Tribunal shall pass appropriate directions for the disbursal of the amount as stated supra on the filing of such application to the personal savings bank account of the appellant through RTGS/NEFT system. In other aspects the award of the Tribunal is confirmed.

14. In the result, this Civil Miscellaneous Appeal is partly allowed in the above observations. No costs.
vs

Sd/-
Assistant Registrar (CS IV)

//True Copy//

Sub Assistant Registrar

To

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

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

+1cc to Mr. Vijaya Kamala, Advocate, SR.No.20769
+1cc to Mr. T.G. Ravichandran, Advocate, SR.No.20791

सत्यमेव जयते

C.M.A.No.1563 of 2015

Kak (17/06/2019)

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