IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.1934 of 2012

1.R.Rajavalli
2.K.Rajagopal
3.R.Ramani (Minor)
4.R.Radhika (Minor)
(3&4 minors rep.by their father
and natural guardian K.Rajagopal)... Appellants/Petitioner

Vs.

1. B.Meena
2. United India Insurance Co.Ltd.,
now operating from
Regional office:
Silinghi Building,
No.134, Greams Road,
Chennai - 6
(R-1 exparte before the Tribunal) ... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 30.06.2011 in M.C.O.P.No. 449 of 2008, on the file of the Motor Accidents Claims Tribunal, (Additional District & Session Judge, IInd Fast Track Court, Chennai.

For Appellant : Mr.S.Gangaram Prasad

For R1 : Exparte before the Tribunal

For R2 : Mr.G.Udayasankar

JUDGMENT

The appellants are the claimants in M.C.O.P.No. 449 of 2008, on the file of the Motor Accidents Claims Tribunal, Additional District & Session Judge, II Fast Track Court, Chennai. They have filed the above claim petition seeking compensation of Rs.20,00,000/-, for the death of one Ramesh, in a road accident that took place on 15.01.2007.

2. The case of the appellants/claimants is as follows:

(i) The first and second claimants are the parents of the deceased and the third and fourth claimants are the sisters of the deceased.

(ii) The deceased was aged about 29 years at the time of the accident. He is a M.R.F. worker at G.L.R.Department, earning a sum of Rs.15,000/- per month plus future increments.

(iii) On 15.11.2007 at about 00.30 hours, the deceased Ramesh while crossing the Periyar E.V.R.Salai (opp.to Sudha Hotel) Chennai from South to North, the driver of a lorry bearing Registration No.TN 02 F 5499 employed under the 1st respondent and during the course and out of his employment, came from West to East on the said road in a rash and negligent manner and dashed against the pedestrian/victim and ran over him resulting in his death on the spot. The 1st and 2nd respondents as owner and insurer of the said lorry are vicariously and statutorily liable for payment of compensation claimed with interest from this date till the date of deposit.

(iv) The deceased R.Ramesh was the only bread-winner in the family and the above named claimants including two unmarried sisters were depending upon the earnings of the deceased since they have no other source of income.

3. The owner of the said lorry remained absent before the Tribunal, and therefore, he was set ex-parte. The second respondent/ Insurance Company filed a counter statement stating that the deceased Ramesh had not followed the traffic rules while he was crossing the Periyar E.V.R.Salai and contributed to the accident. Hence, the Insurance Company is not liable to pay any compensation to pay the appellants/claimants.

4. The rash and negligence on the part of the driver of the lorry belonging to the first respondent herein, is not in dispute and the policy coverage extended by the second respondent is also not in dispute.

5. On the point of quantum, both the parties are heard.

6. Before the Tribunal, on the side of the appellants/claimants, the father of the deceased, PW1 and and an eye witness to the occurrence PW2 and P.W.3 were examined and Exhibits P1 to P13 were marked. On behalf of the Insurance company, no one was examined and no documents were marked.

7. The learned counsel for the appellants/petitioners would submit that the age of the deceased at the time of accident was

29 years and as per the decision of the Constitution Bench of the Honourable Supreme Court of India in National Insurance Company Limited Vs. Pranay Sethi and others reported in 2017 (2) TN MAC 601, the age of the parents should not be the criteria and only the age of the victim should be taken into account. Following the decision of the Hon'ble Supreme Court reported in 2009 (2) TN MAC 1 SC [Sarala Verma and Others Vs. Delhi Transport Corporation and another] , learned counsel for the appellants/petitioners submitted that the multiplier should be '17' instead of '11' fixed by the Motor Accidents Claims Tribunal based upon the decision prevailing at that time.

8. As per the evidence of P.W.1, the first claimant/father of the deceased, his deceased-son was working as M.R.F.Worker at G.L.R.Department and was earning a sum of Rs.12,319/- and marked as Exhibit P13-salary certificate. P.W.2 is the staff who was working in the M.R.F. company, for which, the employee has filed Exhibit P10-Identity Card and Exhibit P11 Service Register. Accordingly, the net salary of the deceased at the time of his death was at Rs.5,250/- per month and the age of the deceased as per service register is fixed at 30 years.

9. On a combined reading of the oral evidence of P.W.2 and coupled with the documentary evidence of Exhibits P11 and P13, the age and the income of the deceased had been fixed. Since on the facts and circumstances of the case, the deduction ought to have been 50% and considering the age of the deceased, '17' multiplier is adopted and accordingly, after deducting 1/3 towards his expenses, the Tribunal awarded a sum of Rs.10,84,116/- (12319 - 1/3 x 12 x 11). since as per the decision of 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, the age of the parents should be taken into account while determining the loss of earning and 50% has to be added as a future prospectus, considering the fact that he was working in MRF Company. Accordingly, 12319 - 50% x 12 x 17= 12319 - 6160 x 12 x17 = Rs.12,56,640/- is awarded as loss of earning. For future prospects, 50% has to be added. Accordingly, Rs.12,56,640 + Rs.6,28,320/- = Rs.18,84,960/- is awarded towards future prospects.

10. Furthermore, the claimants are the parents and sisters of the deceased and accordingly for loss of love and affection, Rs.50,000/- has been granted to each one of them, totalling to Rs.1,00,000/- and Rs.40,000/- each to the unmarried sisters, totalling to Rs.80,000/- With regard to funeral expenses, the

amount awarded by the Tribunal is enhanced from Rs.5,000/- to Rs.15,000/- and for "loss of estate", a sum of Rs.15,000/- is awarded. Thus, in toto, the compensation awarded is hereby tabulated:

Sl. No.	Particulars	Amount granted by the Tribunal	Amount granted by this Court
1.	Loss of earning	Rs. 10,84,116	----
2.	Future prospectus	---	Rs. 18,84,960/-
3.	Funeral expenses	Rs. 5,000/-	Rs. 15,000/-
4.	Love and affection	Rs. 15,000/-	---
5.	Love and affection for parents	----	Rs. 1,00,000/- (Rs.50,000/- each)
6.	Love and affection for unmarried sisters	----	Rs. 80,000/- (Rs.40,000/- each)
7.	Loss to estate	----	Rs. 15,000/-
	Total	Rs. 11,04,116/-	Rs. 20,94,960/-

The compensation awarded by the Tribunal is enhanced from Rs.11,04,116/- to Rs.20,94,960/- which shall carry interest at the rate of 7.5% per annum.

11. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs.

(ii) The quantum of compensation awarded by the Tribunal is confirmed.

(iii) The order directing the owner of the lorry bearing Registration No.TN-02-F-5499 to pay compensation to the claimants is hereby set aside. The second respondent - Insurance Company and the owner of the said lorry are jointly and severally held liable to pay compensation to the appellants/claimants.

(iv) The second respondent-United India Insurance Company Limited is directed to deposit the entire compensation of Rs.20,94,960/- (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No.449 of 2008, on the file of the Motor Accidents Claims Tribunal, Additional District Court, Second Fast Track

Court, Chennai, within a period of eight weeks from the date of receipt of a copy of this order. The apportionment of compensation shall be as per the ratio of apportionment made by the Tribunal.

(v) On such deposit being made, the appellants 1 and 2 are permitted to withdraw their share of compensation amount, in the suitable manner known to law. As far as the minor appellants/claimants are concerned, their respective share amount of compensation shall be deposited in any interest bearing Nationalized Bank and the interest accrued thereon shall be withdrawn by their natural guardian mother once in three months and their share of compensation amount shall be kept in deposit periodically renewed till they attain majority.

(vi) Since this Court has enhanced the award amount of the Tribunal, the claimants shall pay necessary Court fee, if any on the enhanced compensation amount.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal,
   The (Additional District & Session Judge)
   IInd Fast Track Court, Chennai.

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

+1 cc to Mr.G.Udaya sankar, Advocate, S.R.No.31352

+1 cc to Mr.G.Balaji Prasad, Advocate, S.R.No.32374

C.M.A.No.1934 of 2012

NMI(CO)
SSM(15/10/2019)