IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 12.07.2019

C O R A M:

THE HONOURABLE TMT. JUSTICE S.RAMATHILAGAM

C.M.A.No. 2802 of 2015

1. Anthoni Rooban
2. Ani Rooban
3. Anthoni Louis ..Appellant

Vs.

1.M/s. Astalakhshmi Gas Carriers,
No.3/143, Trichy Road,
Namakkal Town, Taluk and District.

2.The Divisional Manager,
National Insurance Co.Limited,
No. 19, Officers Lane,
Vellore. ...Respondents

PRAYER: Civil Miscellaneous Appeal filed against the Judgment and decree dated 19.10.2009 passed in MCOP. No. 955 of 2008 on the file of the Motor Accidents Claims Tribunal, Distirct Judge, Tiruvannamalai.

For Appellant : Ms. M. Malar

For Second Respondent : Mr.J. Chandran- R2

For R1 : Exparte before the Tribunal

JUDGMENT

This Civil Miscelleneous Appeal is filed by the appellant/claimant seeking enhancement of compensation granted by the tribunal in the award dated 19.10.2009 made in MCOP. No. 955 of 2008 on the file of the Motor Accidents Claims Tribunal, Distirct Judge, Tiruvannamalai.

2. The appellants are the claimants in MCOP. NO. 955 of 2008 on the file of the Motor Accidents Claims Tribunal, Distirct Judge, Tiruvannamalai. They filed the said claim petition claiming a sum of Rs.10,00,000/- as compensation for the death of the deceased in the accident that took place on 15.08.2008. The tribunal, considering the pleadings, oral and

docuemntary evidence, held that the accident occurred due to rash and negligent driving by the driver of the 1st respondent's tanker lorry bearing registration No. TN 28 B 9567 and directed the respondents 1 & 2 to pay the compensation of Rs. 2,19,200/- jointly and severally. Not being satisfied with the amount awarded by the tribunal, the appellants have come out with the present appeal seeking enhacement of compensation.

3. The 2nd respondent/Insurance company in their counter statement, denied the mode of the accident as narrated by the claimants and further denied that the deceased was having mechanic shop and was earning Rs.15,000/- per month at the time of the accident. It is further stated that rider of the Hero Honda bearing Reg.No. KA.03-HC 2930 in which the deceased travelled was not having driving licence and as per the Investigation report, the deceased had travelled along with two other friends,totally three persons, which is against the traffic laws, hence the Insurnce Company is not liable to pay any compensation to the petitioner.

4. Heard bothsides and perused the documents available on record.

5. It is argued by the appellant that the tribunal has concluded that the accident had occured only due to rash and negligence driving on the part of the first respondent, which is very much proved before the tribunal. The further contention is that, at the time of the accident the deceased was 30 years and that has been very much proved by Ex.P7 and further it has been clearly stated before the tribunal that the deceased was working as mechanic and earning Rs.15,000/- per month, hence, the tribunal ought to have taken the monthly income as stated by the claimants, but the tribunal has taken only Rs.2,400/- and deducted 1/3 towards personal expenses and arrived at the compensation, which is not a reasonable one. It is further argued that the tribunal ought to have taken the age of the deceased and not the age of the his parents.

6. Aggreived against the income taken by the tribunal, the appellant has submitted a case law reported in 2014 (1) TNMAC 459 (SC) in the case of Syed Sadiq, etc Vs. Divisional Manager, United India Insurance Co.Ltd with regard to fixing income in the absense of any documents to substantiate the claim, it has been taken at Rs.6,500/- per month by adding 50% future prospects. It is also further argued that future prospects also has to be considered by the tribunal. The appellant has also submitted another judgment of this Court reported in 2019 (1) TNMAC 54 (DB) in the case of Andal and Others Vs.Avinav Kanna & Others., wherein this Court observed the principal laid down in Prany Sethi'Case, taking the notional income at Rs.6,500/- by taking into considering the

cost of living prices of essentials and inflation. Further it is also argued by the stating that the deceased in the said case was 48 years and the multiplier was also applied.

7. Per contra, the learned counsel appearing for the 2nd respondent/Insurance company contended that the appellants have not submitted any proof to substantiate their claim for occupation as well as income, hence the income taken by the tribunal at Rs.2,400/- is very much reasonable and the amount awarded under various heads also very much reasonable.

8. On Perusal of records and on hearing both sides, it is seen that the accident had occured on 15.08.2008 and the documents filed in respect of the age of the deceased, it is seen that the deceased was 30 years and it has been stated that he was working as Mechanic and was earning Rs.15,000/- per month, but to prove the same, no materials were placed before the tribunal as well as this Court. In the absence of any proof to show the income, the tribunal has fixed Rs.2400/- per month and deducting 1/3rd of the same, towards his personal expenses, arrived a sum of Rs.1600/- per month. The tribunal has adopted multiplier 11 as per the age of the parents who are aged about 55 and 50 respectivley and by observing that if the deceased had been alive, he would have contributed to the marriage of his own and set up a separate family, therefore, the claimants herein would not be deriving the same monetary benefit from the deceased throughout their life.

9. In the absence of any proof to substantiate the claim with regard to the employment and salary of the deceased, this Court concur with the determination of the tribunal in fixing the monthly income and adopting the multiplier, hence no intereference is required on this aspect.

10. But, it is seen that the tribunal has not added the future prospects, hence as per the judgement of the Hon'ble Apex Court in the case of National Insurance Company Limited Vs.Pranay Sethi reported in 2017 -13 SCALE 12, in which, the Hon'ble Apex Court has held that if the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. In this case as per Ex.P7 the age of the deceased is 30, therefore it is necessary to add 40% of monthly income for future prospects. Accordingly, the loss of dependency is calculated at Rs.2,95,680/- (2400 x 12 x 11 - 1/3 + 40%). Since the sum awarded under other heads are proper and reasonable, the same does not require any intereference by the Court.

The sum awarded by the tribunal is modified by this Court as follows;

Heads	Sum awarded by the Tribunal	Sum modified by this Court
Loss of dependency	2,11,200	2,95,680
Loss of love and affection (Rs.2000/- each)	6,000	6,000
Funeral expenses	2,000	2,000
Total	2,19,200	3,03,680

11. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.2,19,200/- is enhanced to Rs.3,03,680/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellants/claimants are directed to pay necessary Court fee, if any, on the enhanced compensation.

12. The 2nd respondent/Insurance Company is directed to deposit the enhanced award amount now determined by this Court along with interest and costs, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the Tribunal is directed to transfer the amount to the claimants bank accounts thro' RTGS within one week thereon. The apportionment for the modified award amount shall be as ordered by the tribunal.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accidents Claims Tribunal,
Distirct Judge,
Tiruvannamalai.

Copy to:
The Section Officer,
VR Section, High Court,
Madras-104.

+1cc to M/s.M.Malar, Advocate SR.59313

C.M.A.No. 2802 of 2015

MP(CO)
CB(23/11/2020)