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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 23.08.2018

Delivered on : 15.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.M.A.No.633 of 2015

1.Chinthamani
2.Arulkumar
3.Ashokkumar
4.Karupayee
5.Varuthappan

... Appellants/ Petitioners

-Vs-

1.A.Ravi

2.National Insurance Company Limited,
Divisional Office,
No.74-A, Paramathi Road,
Namakkal Town and District. ... Respondents/Respondents
(The 1st respondent set exparte before the tribunal,
hence the 1st respondent is given up in this appeal)

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the decree and judgment dated 28.04.2014 made in M.C.O.P.No.1405 of 2013 on the file of MACT/Additional District Court at Namakkal with interest and cost by allowing this civil miscellaneous appeal.

For Appellants : Mr.Ma.Pa.Thanagavel

For Respondent : Mr.J.Chandran (R2)

JUDGMENT

Aggrieved by the decree and judgment dated 28.04.2014 made in M.C.O.P. No. 1405 of 2013 on the file of MACT/Additional District Court at Namakkal, the appellants/Claimants has filed this appeal seeking for enhancement of compensation.



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2.For convenience, the parties are referred to as per their array in the claim petition.

3.The facts in nutshell are as under:

On 07.05.2013 at about 07.45 P.M., the deceased Mohan was riding in a TVS XL bearing registration No.TN-28-AP-9462 near Kannan House on the road of Kondampatti Medu to Kondamanaickenpatti Main road, on extreme left side of the road towards south to north direction, at the time a Tractor with Trailer bearing registration No.TN-55-S-0879, TN-31-R-4999 belonging to the 1st respondent, driven by its driver in rash and negligent manner and dashed against the deceased. As a result of which, the deceased sustained grievous injuries, immediately, he was taken to the M.M.Hospiatl Namakkal, but unfortunately he died on same day in the hospital. Hence the Appellants/Claimants had filed the claim petition claiming compensation of Rs.20,00,000/- from the respondents jointly and severally .

4.Resisting the claim petition, the 2nd respondent has filed the counter stating that the accident not took place due to the rash and negligent driver of vehicle but only due to carelessness and negligent act of the deceased. In the counter, the respondent also denied the liability of the insurance company, further denied the age, occupation and monthly earning of the deceased and prayed for dismissal of the claim petition.

5.Before the Tribunal, on the side of the appellants P.Ws.1 and 2 were examined and Exs.P-1 to P-12 were marked. On the side of the respondent, the insurance official not let any independent oral and documentary evidence.

6.Upon consideration of oral and documentary evidence, the Tribunal held that the accident occurred due to rash and negligent driving of the driver of the offending vehicle and being the insurer the 2nd respondent was liable to pay the compensation. Taking the monthly income of the deceased at Rs.5,000/- and deducting 1/4 towards personal expenses and also applying multiplier-11, added other conventional heads, the Tribunal awarded total compensation of Rs.7,24,000/-.



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7. Aggrieved by the compensation awarded by the Tribunal, the appellants have filed the appeal and seeking for enhancement of compensation only, in so far as Negligence and liability concerned the respondent insurance company not challenge the award of the tribunal, hence fixing the liability of the insurance company remain unchallenged. As far as the quantum of compensation awarded by the Tribunal is concerned, the learned counsel for the appellants submitted that the deceased was earning Rs.10,000/- PM through Agricultural work to prove the same Ex.P-9 marked regarding extent of land, moreover the accident happened on the year of 2013, the Tribunal erred in taking the monthly income at Rs.5,000/- and failed to add future prospectus and awarded lesser compensation in other heads and therefore, same needs to be enhanced.

8. Per contra, the learned counsel for the respondent insurance company submitted that the award of tribunal is just and reasonable one, hence no interference is required and prays for dismissal of appeal.

9. I have heard Mr.Ma.Pa.Thangavel, learned counsel for the Appellants and Mr. J.Chandran, learned counsel for the respondent insurance company and also perused the materials available on record.

10. As far as quantum of compensation awarded by the Tribunal is concerned, according to the appellants at the time of accident, deceased was earning Rs. 10,000/- PM through Agricultural work to prove the same Ex.P-9 marked regarding extent of land, moreover the accident happened on the year of 2013, but no oral or documentary evidence were produced, in absence of it the tribunal ought to have taken as Rs. 5,000/- PM is very low and inadequate., the learned counsel for appellants further submits that even as per rulings of apex court in Ramachndrappa Case reported in 2011(2) TNMAC 190 SC a sum of Rs.4,500/- as notional income for the year of accident 2004, Syed Sadiq Case reported in 2014(1) TNMAC 459 SC a sum of Rs.6,500/- fixed for vegetable vendor for the accident happen on 2008 and in Neeta case Reported in 2015 (1) TNMAC 161 (SC) for carpenter a notional income of Rs.12, 000/- fixed by apex court for the accident happened on the year of 2011. Here the accident happened on 2013; in the interest of justice it should be taken a sum of Rs.12,000/- PM as a notional income to be just and reasonable.



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11. By considering facts and circumstances of the case and considering cost inflation index and rulings relied by the appellants and considering year of accident this Court it is just and reasonable to fix the monthly income of the deceased at Rs.10,000/- per month.

12. In so far as the age of the deceased concerned, as per EX.P2, Post Mortem Certificate the age of the deceased at the time of accident is- 50, and proper multiplier is 11 as per Sarala Varma case. While awarding compensation, the Tribunal has not taken into consideration the future prospects. If the deceased alive, he would have earned more. Hence, it would be appropriate to give addition of 25% of the salary towards future prospects as per ruling in Pranay Sethi. If we add 25%, the monthly earning of the deceased would come to Rs.12,500/- (Rs. 10,000 + 2,500).

13. In the present case, the number of dependent family members is 5. Therefore, 1/4 has to be deducted as personal and living expenses of the deceased and the loss of dependency would come to {Rs. 12,500 x 12 x 11 x 1/4 } = Rs. 12,37,500/-.

14. The Tribunal awarded Rs. 15,000/- towards funeral expenses and Rs.40,000/- towards loss of consortium which is hereby confirmed; towards loss of estate nothing is awarded by tribunal hence Rs. 15,000/- is awarded. The tribunal not awarded any amount toward transportation, hence a sum of Rs.10,000/- is awarded. In so far as medical Bills are concerned as per Ex.P-10, a sum of Rs.74,000/- is awarded by tribunal and same hereby confirmed.

15. In so far as Loss of Love and affection is concerned the counsel for the appellants vehemently argued the tribunal totally awarded a sum of Rs.1,00,000/- toward loss of love and affection, for the 5 persons, moreover though all claimants are major, they lost the love and affection of the father, moreover the loss of love and affection is akin to the loss of consortium given to wife, hence he prays for enhancement. Considering the facts this Court granted a sum of Rs.40,000/- each toward love and affection to the appellants-2 & 3/ children's and a sum of Rs.40,000/- each toward love and affection to the appellants-4 & 5/parents as filial consortium, thus Rs.1,60,000/- is granted by this court.



16. In the light of the above mentioned discussion, the total sum of Rs.7,24,000/- awarded by the Tribunal is enhanced to Rs.15,51,500/- as under following heads:

Heads	Rs.
Loss of dependency	Rs. 12,37,500/-
Loss of love and affection (Appellants - 2 & 3)	Rs. 80,000/-
Loss of love and affection Rs. 40,000/- each (Appellants-4 & 5)	Rs. 80,000/-
Loss of consortium (Appellant No.1)	Rs. 40,000/-
Funeral Expenses	Rs. 15,000/-
Loss of Estate	Rs. 15,000/-
Transportation	Rs. 10,000/-
Medical bills as per Ex.P 10	Rs. 74,000/-
Total	Rs. 15,51,500/-

17. In the result, the Civil Miscellaneous Appeal is partly allowed with proportionate costs. The compensation of Rs.7,24,000/- awarded by the Tribunal is enhanced to Rs.15,51,500/- with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. The 2nd respondent insurance company is directed to deposit the amount within 6 weeks from the date of receipt of a copy of this order, deduct if any amount already deposited. Out of the total compensation of Rs.15,51,500/- to the first appellant being the wife is entitled for a sum of Rs.6,51,500/- and appellants 2 and 3 being the children's are entitled for a sum of Rs.2,50,000/- each and appellant No. 4 and 5 being the parents are entitled for a sum of Rs.2,00,000/- each with accrued interest and the appellants are withdraw their respective share with accrued interest, less amount already withdrawn if any. The appellants are directed to pay the deficit court fee within a period of four weeks from the date of receipt of the copy of this judgment.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

vs



To

The Motor Accident Claims Tribunal,
Additional District Court,
Namakkal.

Copy to:

The Section Officer,
VR Section, High Court, Madras

+1cc to Mr. Ma. Pa. Thanagavel , Advocate SR.No. 24827

+1cc to Mr. J. Chandran , Advocate SR.No. 24792

C.M.A.No.633 of 2015

A.SK(17/10/2019)