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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 14.08.2018

Delivered on : 13.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.M.A.No.915 of 2015

- 1.Malarkodi
- 2.Minor. Sanjay
- 3.Minor Praveen
(Minors rep. by Guardian/NF/
Mother Malarkodi)
- 4.Parvatham
- 5.Vaithiyalingam .. Appellants/Petitioners

Vs.

- 1.S.Sekar
- 2.The United India Insurance Company Limited,
Divisional Office,
D.No.2, Dr.Sankaran Road,
Namakkal Town and District. ... Respondents /Respondents
(The 1st respondent is already set exparte
before the Tribunal. Hence notice may be
dispensed with in this Appeal)

Prayer:Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 22.07.2014 made in M.C.O.P.No.68 of 2014 on the file of MACT/Additional District Court at Namakkal.

For Appellants : Mr.Ma.Pa.Thanagavel
For Respondents : Mr.T.Ravichandran (for R2)
No Appearance (for R1)

JUDGMENT

Aggrieved by the decree and judgment dated 22.07.2014 made in M.C.O.P.No.68 of 2014 on the file of MACT/Additional District Court at Namakkal, the appellants/Claimants has filed this appeal seeking for enhancement of compensation.

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



3.The facts in nutshell are as under: On 03.09.2013 at about 02.00 A.M., the deceased Thiyagarajan was travelling in cabin of TATAT ACE bearing registration No.TN-28-AJ-0668 belonging to the 1st respondent, driven by its driver in rash and negligent manner and dashed against the tree on the road side. As a result of which, the deceased sustained grievous injuries, immediately, he was taken to the Government Hospital , Namakkal, for first aid, where from he was shifted to Namakkal M.M. Hospital, and he was taken treatment from 03.09.2013 to 09.09.2013 and also he underwent surgery on same day but unfortunately he died on same day in the hospital.

4.It is stated that regarding the accident, the Ex.P-1 FIR was register against the driver of the offending vehicle by the Erumapatti Police Station, in Crime No. 191 of 2013 Under Section 279 and 337 of IPC and altered into 304(A) of IPC and Ex.P-5, charge sheet also filed against the driver offending vehicle, Ex.P-4 Motor Vehicle Report shows that accident not occurred due to any mechanical default. Hence the Appellants/Claimants have filed the claim petition claiming compensation of Rs. 25,00,000/- from the respondents jointly and severally.

5.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 since the driver not posse's valid driving license, further denied the age, occupation and monthly earning of the deceased and prayed for dismissal of the claim petition.

6.Before the Tribunal, on the side of the appellants P.Ws.1 & 2 were examined and Exs.P-1 to P-12 were marked. On the side of the respondent, the insurance official was examined as R.W.1 and marked Ex.R-1 policy copy.

7.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. But unfortunately the insurance company not let any independent oral and documentary evidence to disprove the claim of the appellants. Taking the monthly income of the deceased at Rs.6,000/- and deducting 2/3 towards personal expenses and also applying multiplier-18, add other conventional



8. Inadequate compensation awarded by the Tribunal, the appellants has filed the appeal and seeking for enhancement of compensation, in so far as 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. 20,000/- PM by doing Milk Dairy and Milk Vending business, the Tribunal erred in taking the monthly income at Rs. 6,000/- and awarded lesser amount as compensation and therefore, same needs to be enhanced.

10.I have heard Mr.Ma.Pa.Thangavel, learned counsel for the Appellants and Mr.T.Ravichandran, learned counsel for the 2nd respondent Insurance Company and also perused the materials available on record. No representation on behalf of the 1st respondent.

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dependants and considering year of accident this Court deems 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- 29, and proper multiplier is 17 as per Sarala Varma case instead of 18 taken by Tribunal. 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 40% of the salary towards future prospects. If we add 40%, the monthly earning of the deceased would come to Rs.14,000/- (Rs.10,000 + Rs.4,000).

13. In the present case, the number of dependent family members is 6. Therefore, 1/4 has to be deducted as personal and living expenses of the deceased and the loss of dependency would come to {Rs. 14,000 x 12 x 17 x 1/4 }= Rs.21,42,000/-

14. The Tribunal awarded Rs.15,000/- towards funeral expenses, which is hereby confirmed; towards loss of estate nothing is awarded by tribunal, hence Rs.15,000/- is awarded and towards loss of consortium is concerned Rs.30,000/- awarded by tribunal which is enhanced to Rs.40,000/-. The tribunal not awarded any amount toward transportation, hence a sum of Rs.10,000/- is awarded. In so far as medical Bills is concerned as per Ex.P-7, a sum of Rs.1,99,653/- is awarded 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.30,000/- toward loss of love and affection, that too at the time of accident the minor children's are aged about only 07 & 05 years respectively and parents are about 55 & 59 years respectively. Considering the facts and age of the minor children's who lost their father at young age this Court granted a sum of Rs.75,000/- each toward love and affection to the minor children's and a sum of Rs.50,000/- each to the parents.

16. In the light of the above mentioned discussion, the total sum of Rs.11,38,500/- awarded by the Tribunal is enhanced to Rs.26,51,653/- as under following heads:



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Heads	Rs.
Loss of dependency	Rs.21,42,000/-
Loss of Love and affection (Appellants 2 & 3)	Rs.1,50,000/-
Loss of love and affection (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 Ex.P7 series	Rs.1,99,653/-
Total	Rs.26,51,653/-

17. In the result, the Civil Miscellaneous Appeal is partly allowed with proportionate costs. The compensation of Rs.11,38,500/- awarded by the Tribunal in M.C.O.P. No. 68 of 2014 on the file of MACT/Additional District Court at Namakkal dated 22.07.2014 is enhanced to Rs.26,51,653/- 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 copy this order, deduct if any amount already deposited with liberty given by tribunal to recover the same from the owner of vehicle is hereby confirmed. Out of the total compensation of Rs.26,51,653/-, the first appellant being the wife is entitled for a sum of Rs.10,51,653/- and appellants 2 & 3 being the minor children are entitled for a sum of Rs.5,00,000/- each and appellant No. 4 & 5 being the parents are entitled for a sum of Rs. 3,00,000/- each with accrued interest and the appellants 1, 4 & 5 are concerned this court grant permission to withdraw their respective entire shares with accrued interest and cost, in so far as of the minor amount is concerned, the direction of the Tribunal remain unaltered. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

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Sub Assistant Registrar



To

1.The Additional District Judge/(Motor Accident Claims Tribunal)
Namakkal.

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

+1cc to Mr.T.Ravichandran, Advocate Sr.23754

+1cc to Mr.Ma.Pa.Thanagavel, Advocate Sr.24837 [05/12/2019]

C.M.A.No.915 of 2015

mr[co]

srg 10/10/2019