IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 22.08.2019
CORAM:
THE HONOURABLE MRS. JUSTICE S.RAMATHILAGAM
C.M.A.No.1952 of 2018

1.Madhu @ Bhuvaneshwari
2.Kaviya Sree (Minor)(2nd appellant is rep by his mother 1st appellant)
3.Tamilarasi
4.Rathinam ... Appellants

Vs

1.M/s.Udayam Flowermills,
No.14, Kothukaran Thottam,
Veerappan Chatiram, Erode.

2.The New India Insurance
Company Limited,
Divisional Office,
Sreevari Shopping mall,
2nd floor, No.2/91, New Bus stand,
Meyanoor, Salem. ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the fair and decreetal orders passed in M.C.O.P.No.2433 of 2010 dated 01.10.2012 on the file of the Motor Accident Claims Tribunal, III Additional District Judge, Salem.

For Appellants : Mr.S.P.Yuaraj

For Respondents : Mr.J.Chandran for R2
R1 : Exparte before the Tribunal

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred against the judgment and decree made in M.C.O.P.No.2433 of 2010 dated 01.10.2012 on the file of the Motor Accident Claims Tribunal, III Additional District Judge, Salem. The claimants are the appellants herein, who have preferred the appeal for enhancement of compensation awarded by the Tribunal.

2. The brief facts leading to the claim petition is that on 22.09.2010, at about 06.45 pm., when the deceased Nagaraj was proceeding in his Bajaj Kavaski motorcycle bearing Registration No. TN 38 T 9001 on Erode to Tiruchengode main road near Alamelu Thatha poultry farm, at that time, a mini tempo bearing Registration No. TN 33 AE 1381 which came in the opposite direction, driven by its driver in a rash and negligent manner and hit against the motorcycle, due to which, the deceased Nagaraj sustained grievous injuries. Immediately, the deceased was taken to the Government Hospital, Salem and died on the way to hospital. A criminal case in Crime No.974 of 2010 was also registered against the driver of the Mini tempo by the Pallipalayam Police Station. The claimant claimed a sum of Rs.20,00,000/- from the owner of the said vehicle/first respondent herein as well as the insurer of the offending vehicle, viz., the second respondent.

3.The second respondent/ Insurance Company in the counter statement denied the mode of the accident as stated by the claimants. It is stated that the deceased Nagarajan did not possess a valid driving license at the time of the accident and the driver of the mini tempo has a valid and effective driving license at the time of the accident. Further, the averments made by the second respondent that at the time of the accident, the said motorcycle was owned by another person and the owner and insurer of the motorcycle were not added as necessary parties, the claim application as prayed for non- joinder of necessary parties. The claimants are not the legal heirs of the deceased Nagarajan, they are not depending upon the income of the deceased. Apart from that, the sum claimed by the appellants/claimants under various heads are highly excessive and exaggerated.

4.The Tribunal observed the contentions raised by both side by way of evidence and documents and given a finding that the accident occurred only due to the rash and negligent driving on the part of the driver of the mini tempo and also awarded a sum of Rs.9,44,000/- as compensation under the following heads:

S.No	Head	Compensation (in.Rs.)
1.	Loss of income	8,64,000.00
2.	Love and affection	45,000.00
3.	Funeral expenses	10,000.00

S.No	Head	Compensation (in.Rs.)
4.	Loss of consortium	25,000.00
Total		9,44,000.00

5.Aggrieved against the said award, the appellants/claimants have preferred this appeal for enhancement of compensation.

6.In the grounds of appeal, it is contended that the deceased was mason and earning a sum of Rs.500/- per day and he can easily get a sum of Rs.10,000/- per month. The Tribunal has taken the monthly income of the deceased at Rs.6,000/- per month, which is very much on the meager side. The Tribunal has failed to consider the age of the deceased at 25 years at the time of the accident, the claimants lost their sole bread winner in their family and ought to have awarded the sum towards future prospects. Further, he contended that though the Tribunal has given finding that the accident occurred due to rash and negligent driving on the part of the driver of the mini tempo, the sum awarded by the Tribunal under the heads of transportation, pain and sufferings, love and affection, funeral expenses and loss of consortium are very meager and it is against the ruling of this Court as well as the Hon'ble Apex Court. Hence, the appellants/claimants prayed for modification of the award made by the Tribunal.

7.Heard Mr.S.P.Yuaraj, learned counsel appearing for the appellants/claimants and Mr.J.Chandran, learned counsel appearing for the second respondent/ Insurance Company.

8. On hearing both sides and on perusing the available records, it is observed that the Tribunal has fixed the negligence on the driver of the mini tempo and the second respondent being insurer of the said vehicle is liable to pay the compensation. The Tribunal analysed the evidence and document placed by the claimants, Viz, First Information Report (Ex.P1), which clearly proves the fact that no witness was examined on the side of the second respondent/ Insurance Company, hence the Tribunal has given a finding that the rash and negligent driving of the driver of the first respondent vehicle. Hence, this case is of the view that the negligent aspect and liability fixed by the Tribunal is purely based on the evidence and document. While determining the compensation, the Tribunal has observed the age of the deceased by verifying the Post Mortem Certificate (Ex.P2) and he was a mason and earning a sum of Rs.10,500/- per month. Insofar as the

compensation awarded by the Tribunal towards 'Loss of income' is concerned, as rightly pointed out by the learned counsel appearing for the appellants/claimants the notional income of the deceased fixed by the Tribunal at Rs.6,000/- is very low. Hence, this Court re-fix the amount at Rs.7,500/- per month as notional income of the deceased.

9. A perusal of the records shows that the legal heirs of the deceased are one minor child, wife and parents as his dependents. However, the Tribunal has deducted 1/3 towards the personal expenses of the deceased and the same is set aside and this Court is inclined to deduct 1/4 towards personal expenses of the deceased.

10. It is seen from the records that the claimants are claiming compensation for the death of one Nagaraj and the claimants are wife, daughter and parents of the deceased and the Tribunal has failed to award any amounts towards future prospects.

11. Now coming to the determination of compensation by the Tribunal, by virtue of the decision of the Supreme Court, the deceased is entitled to 40% of the income towards future prospects. Accordingly, this Court is inclined to enhance the sum under the head loss of dependency by taking the monthly income of the deceased at Rs.7,500/- and adding future prospects at 40% which would workout to Rs.3,000/-, the monthly income comes to Rs.10,500/- (Rs.7,500/- + Rs.3,000/-) and the annual income would be Rs.1,26,000/-. After deducting 1/4th towards personal expenses and applying the proper multiplier 18, the loss of dependency would be Rs.17,01,000/- (1,26,000/- x 3/4 x 18), which is proper and reasonable. The Tribunal has awarded Rs.25,000/- towards Consortium to the first claimant / wife of the deceased and also awarded a sum of Rs.45,000/- towards love and affection to the second to fourth claimants/ daughter and parents of the deceased, which are all not properly considered by the Tribunal. Hence, this Court is inclined to enhance the sum awarded towards consortium from Rs.25,000/- to Rs.40,000/- and the sum awarded towards love and affection from Rs.45,000/- to Rs.60,000/-. The Tribunal has awarded a meager sum of Rs.10,000/- towards Funeral Expenses, therefore, this Court is inclined to enhance the same from Rs.10,000/- to Rs.15,000/-.

12. With regard to the other contention raised by the claimants that the Tribunal has failed to award any amounts towards loss of estate this Court inclined to award a sum of Rs.15,000/- towards loss of estate. Accordingly, this Court modifies the sum awarded by the Tribunal under various heads as follows:

S.No	Head	Awarded by the Tribunal (in.Rs.)	Enhanced Compensation (in.Rs.)
1.	Loss of income	8,64,000.00	17,01,000.00
2.	Love and affection	45,000.00	60,000.00
3.	Funeral expenses	10,000.00	15,000.00
4.	Loss of consortium	25,000.00	40,000.00
5.	Loss of estate		15,000.00
Total		9,44,000.00	18,31,000.00

Thus, the appellants/claimants are entitled to a sum of Rs.18,31,000/- together with interest at the rate of 7.5% per annum from the date of claim till the date of deposit.

13. In the result,

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

(ii) The compensation awarded by the Tribunal is enhanced from Rs.9,44,000/- to Rs.18,31,000/-, shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. Further, the appellants are not permitted to claim any interest in respect of the delay period of 1877 days in filing the appeal as per order of this Court dated 27.08.2018.

(iii) The claimants are directed to pay the court fee for the enhanced compensation, if any, and the Registry is directed to draft the decree only after the payment of Court fee.

(iv) The second respondent/ Insurance Company is directed to deposit the entire amount, awarded by this Court along with interest and costs before the Tribunal, within a period of four weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any. The interest awarded by the Tribunal at the rate of 7.5% per annum is unaltered. On such deposit being made, the Tribunal shall transfer the amount to the claimant's bank account through RTGS within a period of two weeks thereon.

(v) On such deposit being made, the claimants are at liberty to withdraw the same as per the apportionment given below and share of the minor 2nd claimant is concerned, the same shall be deposited in any of the Nationalized Bank, in an interest bearing FD Account till the minor attains majority and the first claimant/ mother is permitted to withdraw accrued the interest once in three months.

(a) The 1st claimant is entitled to a sum of Rs.7,31,000/-.

(b) The 2nd claimant is entitled to a sum of Rs.6,00,000/-.
© The 3rd and 4th claimants are entitled to a sum of Rs.2,50,000/- each.

Sd/-
Asst.Registrar (CCC)

/true copy/
Sub Asst. Registrar

vkr

To

The Motor Accidents Claims Tribunal,
The III Additional District Judge,
Salem.

+1 cc to Mr.S.P.Yuvaraj Advocate sr72624

C.M.A.No.1952 of 2018

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