IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A.NO.510 OF 2013

1.P.Krishnaveni
2.V.Periyathambi ... Appellants

..Vs..

1. Babu Travel Agencies,
950, 13th Central Cross Street,
M.K.B.Nagar, Chennai 39.

2. ICICI Lombard General
Insurance Company,
Chottabhai Centre,
No.140, 2nd and 3rd floor,
Nungambakkam high road,
Chennai 34. ... Respondents

PRAYER:
Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award dated 11.12.2012 in M.C.O.P.No.2964 of 2009 on the file of the Motor Accidents Claims Tribunal, Chief Judge, Small Causes Court, Chennai.

For Appellants : Mr.V.Mohan choudary

For Respondents : Mrs.R.Sree Vidhya for R2
R1 - Ex-parte

JUDGMENT

The appellants are the claimants in M.C.O.P.No.2964 of 2009, on the file of the Motor Accident Claims Tribunal, the learned Chief Judge, Small Causes Court, Chennai. They filed the above said claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.8,00,000/- for the death of their son Ganesan in a road accident that took place on 15.07.2009.

2.On 15.07.2009, at about 01.30 hours, when the deceased Ganesan was riding the bicycle slowly and cautiously in Gandhi Irwin road from south to north direction. At that time, a speeding tata sumo car bearing Registration No.TN 05 S 9012 came rashly and negligently in the said road from behind and knocked down the deceased Ganesan. As a result of which, he sustained multiple injuries and died on the same day in the hospital. It is further contented by them that the rash and negligent driving of the driver of the tata sumo car bearing Registration No.TN 05 S 9012 was the cause of the accident and that since the said tata sumo car was insured with the second respondent, both of them are jointly and severally liable to pay compensation to them.

3.The owner of the tata sumo car remained absent before the Tribunal and therefore, he was set ex-parte. The ICICI Lombard General Insurance Company, Chennai contested the above said claim petition by filing a counter. The learned Chief Judge, Small Causes Court, Chennai after analysing the evidence on record, awarded a compensation of Rs.8,00,000/- together with interest at the rate of 7.5% per annum to the appellants/ claimants.

4.The Compensation awarded by the Tribunal under various heads is extracted hereunder:

S.No	Head	Amount granted
1.	Loss of pecuniary benefits	Rs.4,29,000/-
2.	Ambulance charges	Rs. 14,989/-
3.	Funeral expenses	Rs. 10,000/-
4.	Love and affection to each claimants(Rs.10,000/-x 2)	Rs. 20,000/-
Total		Rs.4,73,989/-

5.Not satisfied with the quantum of compensation awarded by the tribunal, the appellants/claimants have filed the present appeal under Section 173 of the Motor Vehicles Act, 1988 seeking for enhancement of compensation.

6.Mr.V.Mohan choudary, learned counsel for the appellants/claimants would contend that the tribunal has wrongly taken the multiplier as 5 instead of 17. The age of the deceased as 30 years and it was confirmed by the post mortem certificate (Ex.P3) and also the age of the deceased was mentioned as 21.07.1979 in the transfer certificate (E.P6). The accident had taken place on 15.07.2009, therefore, the age of the deceased was fixed as 30 years at the time of the accident.

7.Mrs.Sree Vidhya, learned counsel appearing for the second respondent, contented that the deceased was working as Accounts Assistant in Oriental Cuisines Private Limited, Chennai. She specifically contended that in the present case, the permanency of the employment cannot be determined, because, he was appointed just two years before the accident, it is not known whether the employment of the deceased is certain or not.

8.A perusal of the records shows that the deceased had mother and father as his dependents. The deceased died as a bachelor. Therefore, the Tribunal has rightly deducted 50% towards the personal expenses of the deceased.

9. The Tribunal has fixed the monthly income of the deceased as Rs.11,000/- and wrongly added 30% towards future prospects. As per the decision laid down in National Insurance Co. vs Pranay sethi and others reported in 2017 (2) TNMAC 601, only 40% should have been added towards future prospects instead of 30% as added by the Tribunal, since the age of the deceased was 30 years on the date of the accident. The income of the deceased was rightly determined as Rs.11,000/- per month as per the salary certificate (Ex.P9). Further, the Tribunal has wrongly deducted 1/2rd towards personal expenses of the deceased. Since, he is a bachelor. The Tribunal has rightly applied the multiplier. However, in the present case has held by the Hon'ble Apex Court in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121, for the age group of 30 years, the proper multiplier will be 17. However, on the otherhand, the Tribunal has wrongly applied the multiplier as 5. Therefore, this Court applied the multiplier 17 instead of 5, for the purpose of determining the loss of pecuniary benefits.

Calculation:

Income = Rs.11,000/-
40% Future Prospects = Rs.4,400/-
Total = Rs.11,000/- + Rs.4,400/- = Rs.15,400/-

Loss of Pecuniary Benefits:

= Rs.15,400/- x 17 x 12 x 1/2 deduction
= Rs.15,70,800/-

10. The tribunal has awarded a sum of Rs.15,000/- towards funeral expenses and Rs.1,00,000/- towards loss of love and affection respectively. This Court is inclined to reduce the award amount to a sum of Rs.10,000/- towards funeral expenses and a sum of Rs.20,000/- each (1st and 2nd appellants/claimants) towards loss of love and affection respectively. The Tribunal has awarded towards ambulance charges a sum of Rs.14,989/- and the same is confirmed by this Court. However, the Tribunal has

failed to award any amount towards loss of estate and therefore, a sum of Rs.15,000/- is awarded towards loss of estate respectively. Thus, the revised compensation awarded by this court under various heads is extracted hereunder:

S.No.	Head	Amount granted
1.	Loss of Pecuniary benefits	Rs.15,70,800/-
2.	Love and affection to each claimants(Rs.20,000/- x 2)	Rs. 40,000/-
3.	Funeral expenses	Rs. 10,000/-
4.	Loss of estate	Rs. 15,000/-
5.	Ambulance charges	Rs. 14,989/-
Total		Rs.16,50,789/-

Thus, the appellants/claimants are entitled to a sum of Rs.16,50,789/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

11.In the result,

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

(ii)The compensation awarded by the tribunal is enhanced from Rs.4,73,989/- to Rs.16,50,789/-, which shall carry interest at the rate of 7.5% per annum.

(iii)The appellants/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 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 six 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 and the apportionment shall be as ordered by this Court. 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 appellants/claimants are at liberty to withdraw the same as per the apportionment given below after following due process of law.

(a) The 1st appellant/claimant is entitled to a sum of Rs.8,50,789/- together with accrued interests and costs.

(b) The 2nd appellant/claimant is entitled to a sum of Rs.8,00,000/-.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

vkr

To

The Motor Accidents Claims Tribunal,
The Chief Judge, Small Causes Court,
Chennai.

+2cc to Mr.V.Mohan choudary, Advocate, S.R.No.14304
+1cc to Mrs.R.Sree Vidhya, Advocate, S.R.No.14948

C.M.A.No.510 of 2013

VSNII(CO)
CS/17/02/2020