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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2019

CORAM

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

CMA. No.93 of 2013

1.Anantha Jothi
2.Ananthamannan
3.Adal Arasu
4.Venkatasmy
5.Swarnagandhi

... Appellants/Petitioners

Vs

1.Dr.Jayanthi Soundararaghavan
2.The New India Assurance company Limited,
No.30, J.N.Street, 1st Floor,
Puducherry-1.

...Respondents /Respondents

Prayer:- This Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and award of the learned Motor Accidents Accidents Claims Tribunal (Principal District Judge) Villupuram in M.C.O.P.No.74 of 2010 dated 21.09.2012

For Appellant : Mr.S.Kaithamalai Kumaran

For R2 : Mr.G.Anandan

JUDGMENT

This Civil Miscellaneous has been preferred against the judgment and award passed by the learned Motor Accidents Accidents Claims Tribunal (Principal District Judge) Villupuram in M.C.O.P.No.74 of 2010 dated 21.09.2012

Brief facts leading to the claim application are as follows;

2. On 25.04.2009, at about 7.45 A.M., while one Thirumangaimannan was going by his cycle for his job, nearing the karikalampakkam karumathi shed, the 1st respondent's Tata India Car bearing Registration No.PY-01-N-1666 driven by its



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driver in a rash and negligent manner, hit against the said Thirumangaimannan. Immediately, he was taken to the Government General Hospital, Puducherry, where he died at about 8.50 A.M. The accident took place due to the rash and negligent driving on the part of the driver of the car. He was aged about 45 years and at the time of accident, he was earning R.6,000/- per month. Therefore, the petitioners, who are the legal representatives of the deceased have filed the petition seeking compensation of Rs.9,00,000/-.

3. The Insurance Company in the counter statement has denied the allegation made in the petition and the manner of the accident as stated by the claimants. It is further stated that the alleged accident had occurred only by the contributory negligence of the deceased who crossed the road suddenly without following the traffic rules and regulations and the allegation that the driver of the car was alone responsible for the accident is false. The 1st respondent does not admit the age, income and occupation of the deceased. The amount claimed as compensation is highly excessive. The Tata Car bearing the Registration No.PY-01-N-1666 was insured with this respondent and the driver was also holding valid driving license and vehicle had valid permit and F.C at the time of accident. Since, the 1st respondent did not choose to contest the case, the second respondent has filed an application under Section 170 of M.V.Act. By putting all the averments the petition to be proved by the petitioners themselves.

4. The Tribunal after analysing the evidence and document placed before it, has awarded a sum of Rs.3,71,000/- as compensation against the claim of Rs.9,00,000/- by holding that the accident had occurred only due to the rash and negligent driving on the part of the driver of the car. Aggrieved against the said award, the claimants have preferred this appeal for enhancement. The sum awarded by the Tribunal under the following heads is as follows:

Heads	Amount awarded by the Tribunal
Loss of Income (36,000 x14= 5,04,000) (Rs.5,04,000- 1,68,000=3,36,000)	3,36,000/-
Funeral expenses	5,000/-
Loss of Love and affection	10,000/-



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Heads	Amount awarded by the Tribunal
Loss of consortium	20,000/-
Total	3,71,000/-

5. In the grounds of appeal it is stated that the Exhibit P7 (Certificate issued by the manager, Indian Security Organise) salary certificate issued by the employer was not considered by the tribunal. Since the evidence of PW3 (Babu) and exhibit P7 (Certificate issued by the manager, Indian Security Organise) were not challenged by the Insurance company, deducting 1/3rd of the total salary is not sustainable. It is also stated that as per the decision reported in 2009 (2) TNMAC 279 for fixing the monthly income of the deceased at Rs.3000/- is not legally sustainable as the salary certificate Exhibit P7 proved by PW3 (Babu) is produced in this case. It is also stated that the none of the defendants of the deceased are employed and the family was solely depending on the income of the deceased. The tribunal has not considered this fact while awarding the compensation to the claimants.

6. Heard both sides and perused the documents available on record.

7. The claimants have stated that the compensation awarded is not adequate and the salary certificate issued by the employer and Exhibit P1 (Xerox copy of F.I.R registered in crime No.102/2009 of Villianur Traffic Police Station) were not considered by the tribunal. The other grievance raised by the claimant is that the monthly income of the deceased has been taken on Rs.3000/- is very much on the meager side when the deceased was working as Security guard and he was also 45 years old at the time of accident. The sum awarded for loss of love and affection and consortium for the wife and the two sons, when the deceased was only person who was taking care of the family financially as well as with all care and guidance. The appellant contended that the deceased for 45 years old at the time of accident and he was working as the security guard in private company and he was earning a sum of Rs.5,400/- where as the tribunal has taken only Rs.3000/- per month, which is not at all a reasonable and justifiable award.

8. On perusal of records it is observed that though Exhibit P7 (Certificate issued by the manager, Indian Security Organise) is filed, neither the employer nor authorizer of the said documents was examined by the tribunal. The respondent / Insurance Company has also of the view that in the absence of reliable evidence in support of Exhibit P7 (Certified issued by



the manager, Indian Security Organise), the sum taken into consideration by the tribunal is very much reasonable but the arguments advanced by the appellant is that, when it is clearly prove that the deceased was a security guard in a private company and even compared to a coolie definitely who can earn Rs.150/- per day, whereas the claimant who was working as security guard, his income has to be taken as per the salary certificate. Hence, this court is of the view that though in the absence of oral evidence, considering the age of the deceased as well as his occupation, his income has to be properly modified. Accordingly, by taking into consideration of the age of the deceased, this Court fix the annual income at Rs.4,500/- and calculated the loss of income, which comes to Rs.5,04,000/-. Likewise this Court also enhanced the sum awarded for funeral expenses to a sum of Rs10,000/-. Since, the amount awarded by the tribunal in the head, loss of love and affection and loss of consortium are found proper and reasonable, the same does not require any interference.

The sum awarded by this Court is modified as follows:

Heads	Amount awarded by the Tribunal Rs.	Amount modified by this Court Rs.
Loss of Income	3,36,000/-	5,04,000/- (4,500 x12x14=7,56,000) (Rs.7,56,000 x 1/3 = 2,52,000) (Rs.7,56,000- 2,52,000 = 5,04,000)
Funeral expenses	5,000/-	10,000/-
Loss of Love and affection	10,000/-	10,000/-
Loss of consortium	20,000/-	20,000/-
Total	3,71,000/-	5,44,000/-

9. In view of the above modification, the Civil Miscellaneous Appeal is partly allowed. No costs. As far as the apportionment of the enhanced award amount is concerned the same shall be equally divided between claimants 1 to 3.



10. The 2nd respondent/Insurance Company is directed to deposit the entire award amount as per the modified award passed by this Court, with interest at the rate of 7.5% per annum and costs, before the Tribunal, after adjusting the amount, if any, already deposited, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the amount to the respective claimants to their respective bank account thro' RTGS within one week thereon.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

vsn

To

The Principal District Judge,
Motor Accidents Claims Tribunal,
Villupuram.

Copy to

The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.G.Anandan, Advocate Sr.6785
+1cc to Mr.A.K.Kumarasamy, Advocate Sr.7434

C.M.A.No.93 of 2013

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