IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.11.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.474 of 2016

1.Selvaraj
2.Mohankumar
3.Nirmala ...Appellants/Petitioners

Vs

1. Vijayalakshmi
(Notice to R1 may be dispensed with as R1 set ex-parte before the Tribunal)

2. The Oriental Insurance Co.,Ltd.,
Kumar Complex,
1st Floor, No.146, West Car Street,
Tiruchengode. ...Respondents/Respondents

Appeal under Section 173 of the Motor Vehicles Act against the judgment and decree dated 09.06.2015 made in MCOP No.196 of 2013 on the file of the Motor Accidents Claims Tribunal, Principal District Judge, Namakkal.

For Appellants : Mr.C.Paraneedharan
For R2 : Mr.J.Chandran
R1 : Exparte

JUDGMENT

This appeal is preferred by the appellants/claimants against the award of a sum of Rs.2,15,000/- towards compensation due to the death of their father in a motor vehicle accident.

2.The case in brief, is as follows:

On the fateful day, ie. on 28.09.2012 at about 01.05 p.m., the deceased Karuppannan was travelling in the TVS-50 two-wheeler bearing Reg.No.TN-28-F-4046 on the Tiruchengode to Vellore Road. When he reached near Nallur, Mariyamman Kovil Bus Stop, near Kabilar Malai Privu Road, the bus bearing Reg.No.TN-34-R-5195 came in a rash and negligent manner and hit on the back side of the two-wheeler of the deceased. Due to the said impact, the deceased sustained injuries on his forehead, left leg, fracture of left leg finger and died on the spot. The sons and daughter of the deceased filed a claim petition before the Tribunal claiming a sum of Rs.10,00,000/- as compensation. On consideration of the materials and evidence available on record, the Tribunal has awarded a total compensation of Rs.2,15,000/- with interest at the rate of 7.5% per annum from the date of petition.

3.Being not satisfied with the quantum of the compensation awarded by the Tribunal, the appellants-claimants have filed the present Civil Miscellaneous Appeal for enhancement of compensation.

4.The learned counsel for the appellants contended that the deceased was an agriculturist and earning a sum of Rs.10,000/- per month, but the Tribunal has erroneously fixed a meager sum of Rs.5,000/- as monthly income. He also submitted that the amounts awarded by the Tribunal towards other heads are very low. Stating so, the learned counsel prayed for enhancement of compensation.

5.The learned counsel for the second respondent Insurance Company has submitted that the Tribunal has correctly considered the materials and evidence and has correctly awarded the compensation which is just, fair and reasonable and hence the same does not require any interference in the hands of this Court.

6.Heard the learned counsel for the appellants / claimants and the learned counsel for the second respondent Insurance Company and perused the materials available on record carefully and meticulously.

7.The Tribunal has awarded a sum of Rs.2,00,000/- towards loss of income. This amount has been arrived at by fixing the monthly income at Rs.5,000/-, deducting 1/3rd of the amount towards his personal expenses and adopting the multiplier of 5. It is pertinent to note that the deceased was aged 62 years and as per the dictum of the Hon'ble Apex Court in "Smt.Sarala Verma and others v. Delhi Transport Corporation and another case", reported in 2009 (6) SCALE 129, the multiplier to be adopted is 7, whereas, the Tribunal has erroneously adopted the multiplier 5. It is relevant to extract paragraph 42 of the said decision, which reads as under:

> "42. We therefore hold that the multiplier to be used should be as mentioned in Column (4) of the table above (prepared by applying Susamma Thomas, Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15

to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years."

8.If '7' multiplier is adopted, the loss of income works out to Rs.2,80,000/- (Rs.5,000/- x 12 x 2/3 x 7). Hence, the amount awarded by the Tribunal towards loss of income stands modified to Rs.2,80,000/-. The Tribunal has also awarded a sum of Rs.10,000/- towards loss of love and affection and Rs.5,000/- towards funeral expenses. The amounts awarded by the Tribunal towards these heads are reasonable and hence the same are confirmed. The details of the modified compensation are as follows:

HEADS	AMOUNT (Rs.)
Loss of income	2,80,000/-
Loss of love and affection	10,000/-
Funeral expenses	5,000/-
TOTAL...	2,95,000/-

Thus, the claimants are entitled to the modified compensation of Rs.2,95,000/- with interest at the rate of 7.5% per annum from the date of petition.

9.The Civil Miscellaneous Appeal is allowed to the extent indicated above. No costs. The second respondent Insurance Company is directed to deposit the modified amount of compensation as ordered above, after deducting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants / claimants are permitted to withdraw the same, on making proper application before the Tribunal.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

gbi/km

To

1.The Principal District Judge,
  Motor Accidents Claims Tribunal,
  Namakkal.

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

+1 CC to Mr.J.Chandran, Advocate sr 9649.

BR(CO)
SP(24/07/2020)