WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 12.10.2018

Delivered on : 15.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.M.A.No.1896 of 2018

1.Sasikala
2.Minor Sindhu
3.Minor Jenifer
Minors rep. by their mother and next friend
Sasikala
4.Rajammal ... Appellants/Petitioners

Vs

1.Larsen and Tourbo Co. Ltd.,
ECC Construction Group, Maker Towers,
E Block, 6th Floor, Coffee Parade Colora,
Mumbai.

2.The New India Assurance Co. Ltd.,
No.45, Second Line Beach, Moores Street,
Chennai-600 001. ... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award dated 28.02.2011 passed in M.C.O.P.No.2221 of 2007 on the file of the Motor Accident Claims Tribunal (Chief Judge, Small Causes Court), Chennai.

For Appellant : M/s.A.N.Viswanatha Rao
Ramya V.Rao

For Respondents : Mr.J.Chandran
for respondent No.2

R1 : Exparte before the Tribunal

JUDGMENT

Calling in question the award dated 28.02.2011 passed in M.C.O.P.No.2221 of 2007 by the Motor Accident Claims Tribunal, Chief Judge, Small Causes Court, Chennai, the present appeal is filed by the appellants.

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

2. The first appellant is the wife of the deceased Krinshnamoorthy and appellants 2 and 3 are minor daughters and fourth appellant is the mother of the deceased.

3. It is the case of the appellants, who are the claimants, that on 10.11.1999 at about 9.00 hours when the deceased Krishnamoorthy was riding his bicycle at ECR Road, near Government High School, Sholinganallur, a lorry bearing registration No.PY-01 M 3439 driven by its driver in a rash and negligent manner dashed against the deceased causing fatal injuries. The first respondent is the owner of the vehicle which caused the accident and the second respondent is the insurance company which insured the said vehicle. In this backdrop, the appellants have claimed compensation to the tune of Rs.10 lakhs.

4. The second respondent/insurance company refuted the contents of the claim petition by filing a counter statement. It was alleged that the deceased was solely responsible for the accident and therefore, they are not liable to pay the compensation. The second respondent/insurance company also denied the age, occupation and monthly income of the deceased and that the total compensation claimed is highly excessive.

5. The learned Tribunal, by award dated 28.02.2011 passed in M.C.O.P.No.2221 of 2007, awarded total compensation of Rs.4,60,000/-. Being dissatisfied with the quantum, the appellants have filed the present appeal.

6. Assailing the quantum, the learned counsel for the appellants contended that at the time of accident deceased was working as Ginder and was earning Rs.5,000/- per month. However, the Tribunal erred in taking the monthly income at Rs.3,000/-. He would submit that since the deceased was doing skilled job, the Tribunal ought to have fixed the monthly income of at Rs.5,000/-. In support the learned counsel relied upon the decision of the Hon'ble Supreme Court in Sanobanu Nazirbhai Mirza and others v. Ahmedabad Municipal Transport Service, reported in 2013 92) TN MAC 565 (SC).

7. Per contra, reiterating the quantum of compensation awarded by the Tribunal, the learned counsel for the second respondent submitted that the Tribunal awarded just compensation and there is no need to interfere with the same.

8. I have considered the submissions made by the learned counsel appearing on either side and also perused the materials available on record.

9. It is not necessary for this Court to narrate entire

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

facts in detail qua negligence and liability. It is for the reasons that these things are recorded by the Tribunal that the second respondent is liable to pay the compensation to the appellants. Since the aforesaid finding of the Tribunal is based on evidence and also none of these findings are under challenge, this Court is of the considered view that the finding of the Tribunal that the second respondent to pay the compensation is confirmed.

10. The only point that arises for consideration in this appeal is whether the appellants are entitled to get enhanced compensation and if so, to what extent.

11. In her evidence, P.W.1, wife of the deceased deposed that at the time of accident, her husband was working as Grinder in Diamond Engineering (Chennai) Private Limited, Chennai and was earning Rs.5,000/- per month. Admittedly, P.W.1 has not produced any evidence to show that her husband was earning Rs.5,000/- per month by working as Grinder in Diamond Engineering (Chennai) Private Limited, Chennai. However, attending grinding work in a company is a skilled job.

12. In Sanobanu Nazirbhai Mirza and others v. Ahmedabad Municipal Transport Service, supra, the Hon'ble Supreme Court held that it would be just and proper to take a sum of Rs.5,000/- as the monthly income of the deceased therein having regard to the nature of job that the deceased was performing as a polisher, which is a skilled job.

13. In the instant case, as stated supra, when there is no rebuttal evidence adduced by the second respondent, it would be appropriate to take the monthly income of the deceased at Rs.4,000/-. Considering the age of the deceased and also following the dictum laid down by the Hon'ble Supreme Court in National Insurance Company Limited v. Pranay Sethi, reported in 2017 (2) TN MAC 609 (SC), an amount of 40% is required to be added towards future prospects. Adding 40% i.e., Rs.1,600/-, the monthly income of the deceased is fixed at Rs.5,600/-. Since the dependent members are 4 in numbers, it would be appropriate to deduct one-fourth towards personal expenses. Deducting one-fourth towards personal expenses, the monthly contribution to the family is calculated at Rs.4,200/-, i.e., Rs.50,400/- per annum.

14. At the time of accident, the deceased was aged 35 years. For the age group 35 - 40 years, the multiplier to be adopted is "16". Adopting multiplier "16", the loss of dependency is calculated at Rs.8,06,400/-. Thus, a sum of Rs.8,06,400/- is awarded towards loss of dependency, as against Rs.4,32,000/- awarded by the Tribunal.

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

15. As far as conventional damages are concerned, the Tribunal awarded Rs.10,000/- towards loss of consortium to the first appellant; Rs.10,000/- towards loss of love and affection to the appellants 2 to 4 and Rs.8,000/- towards funeral expenses.

16. With respect to conventional heads, Hon'ble Supreme Court in the case of National Insurance Company Ltd vs. Pranay Sethi, supra, para No.61 (viii) has held that, reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000/, Rs. 40,000/- and Rs. 15,000/- respectively. Following the decision of the Hon'ble Supreme Court, Rs.10,000/- awarded by the Tribunal under the head loss of consortium to the first appellant is enhanced to Rs.40,000/-; Rs.8,000/- awarded by the Tribunal towards funeral expenses is enhanced to Rs.15,000/-. The Tribunal has not awarded any amount towards loss of estate. Under the head loss of estate, a sum of Rs.15,000/- is awarded.

17. As far as an amount of Rs.10,000/- awarded by the Tribunal under the head loss of love and affection to the appellants 2 to 4 is concerned, the said amount awarded by the Tribunal is very low and the same is enhanced to Rs.20,000/- each. Thus, the total compensation of Rs.4,60,000/- awarded by the Tribunal is enhanced to Rs.9,36,200/- as under:

Loss of dependency	:	Rs.8,06,200.00
Loss of consortium to first appellant	:	Rs. 40,000.00
Loss of love and affection to appellants 2 to 4 @ Rs.30,000/- each	:	Rs. 60,000.00
Funeral expenses	:	Rs. 15,000.00
Loss of estate	:	Rs. 15,000.00
Total	:	Rs.9,36,200.00

18. Out of the total compensation of Rs.9,36,200/-, the first appellant is entitled to Rs.3,36,200/-; minor appellants 2 and 3 are entitled to Rs.2.50 lakhs each and the fourth appellant is entitled to Rs.1,00,000/-.

19. In the result, the Civil Miscellaneous Appeal is partly allowed with proportionate costs. The total compensation of Rs.4,60,000/- awarded by the Tribunal is enhanced to Rs.9,36,200/- payable with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, excluding the delay period, which was condoned on waiver of interest. On such deposit, the appellants 1 and 4 are permitted

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

to withdraw their respective shares along with accrued interest. The shares in respect of minor appellants are directed to be invested in anyone of the nationalised bank till they attain majority and the first appellant is permitted to withdraw the accrued interest once in three months directly from the bank for the welfare of the minors. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

vs

To

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

Copy TO

The Section Officer,
V.R. Section, High Court,
Madras.(2 copies)

+1cc to Mr.J.Chandran, Advocate, S.R.No. 24790

C.M.A.No.1896 of 2018

GP(CO)
GN(03/12/2019)

https://hcservices.ecourts.gov.in/hcservices/