IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.08.2019

CORAM:

The HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.No.2625 of 2019

1.Panchali
2.Devanayagam
3.P. Gunasundari
4.Minor P. Azhagappan
5.Minor P. Anitha
Selvi (died)
6.R.Sathiyamoorthy
7.R. Narayanan
(Minor appellants rep. By
mother- P.Gunasundari/3rd appellant) ... Appellants/petitioners

..Vs..

1. Sambasivam
2.The Divisional Manager,
National Insurance Co., Ltd.,
DO.110, JN Street, Puducherry 605 001. ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 12.04.2019 made in M.C.O.P.No.1025 of 2017 on the file of the Motor Accident Claims Tribunal, (Special Sub-Judge, Cuddalore).

For Appellants : Mr.S.Udayakumar

For Respondent No.2 :Mr.S.Arunkumar

JUDGMENT

The Civil Miscellaneous Appeal is filed by the appellants/claimants seeking enhancement of compensation granted by the Tribunal in the award dated 12.04.2019 made in M.C.O.P.No.1025 of 2017 on the file of the Motor Accident Claims Tribunal, (Special Sub-Judge, Cuddalore).

2. The brief facts of the case is as follows:

On 08.12.2016 at about 9.40 hours, when the deceased viz., Raguraman was riding his bicycle keeping extreme left near Anjaneyarkoil Bus Stop, Thookanam Pakkam, at that time, a Hero splendor plus bearing Registration No.PY-01-AR-2335 came in a rash and negligent manner, endangering the public safety and dashed against the deceased and thus caused the accident. In the said accident, the claimant sustained multiple injuries all over the body and was declared dead. Hence, the legal heirs of the deceased made a claim for a sum of Rs.15,00,000/- as compensation as against the owner-cum-driver of the offending vehicle, first respondent herein as well as the insurer of the offending vehicle, viz., the second respondent.

3. The first respondent/owner of the vehicle remained absent before the Claims Tribunal, and therefore, he was set ex-parte.

4. The second respondent/Insurance Company contested the claim petition by filing a counter statement, inter alia disputing their liability on the ground that the owner of the two-wheeler does not have a valid driving licence at the time of accident, and hence, they are not liable to indemnify the first respondent. Further, they denied the age, occupation and monthly income of the deceased and the nature of injuries sustained by him and prayed for dismissal of the claim petition.

5. Before the Tribunal, in order to prove the claim, the second appellant examined himself as P.W.1 besides examining one Mohan as P.W.2 and marked 8 documents as Exs.P.1 to P.8. On the side of the Insurance Company, two witnesses were examined as RW1 and RW2 and Exs.R1 to R6 were marked.

6. The Claims Tribunal, on the basis of both oral and documentary evidence, held that the accident was due to the rash and negligent driving of the car, belonging to the first respondent/owner, and the second respondent, being the insurer of the offending vehicle, the Insurance Company is liable to pay the compensation to the appellants with liberty to recover the same from the first respondent by initiating necessary proceedings. By arriving at such a conclusion, the Tribunal made the calculation under different heads and passed an award for a total sum of Rs.2,19,000/- with interest at the rate of 7.5% per annum from the date of Petition till payment as compensation to the appellants/claimants. The break up details of the compensation amount awarded by the Tribunal are as follows:-

S.No	***Head***	***Amount***
1.	Loss of income	Rs.1,89,000/-
2.	Loss of estate	Rs.15,000/-
3.	Funeral Expenses	Rs.15,000/-
Total		Rs.2,19,000/-

7. Aggrieved against the quantum of compensation awarded by the Tribunal, the appellants/claimants have filed the present Appeal for enhancement.

8. The learned counsel appearing for the appellants/claimants submitted that, due to the accident, rider of the bicycle viz., Raguraman sustained fatal injuries and declared dead at PHC, Thokkanamapakkam and Jawaharlal Institute of Post graduate Medical Education and Research in postmortem was completed. The deceased was a Coolie. Ex.P1 is the Xerox True Copy of FIR and Ex.P2 is the Xerox True copy of Postmortem Certificate of the deceased. He further contends that the Tribunal has not considered that the Coolie will be working till the age of 75 and all the claimants are depending upon the income of the deceased and sufficient funds has not been allotted to future pecuniary loss, loss of consortium and love and affection. The Tribunal has not adopted proper multiplier in awarding compensation.

9. The learned counsel for the second respondent/Insurance Company denied the mode of accident, age, occupation, monthly income, nature of injuries sustained by the deceased and expenses incurred by the claimants. He submitted that the deceased did not possess valid and effective driving license at the time of the accident. Hence, this respondent is not liable to pay any compensation claimed by the petitioner and their claim is very excessive. Therefore, he prays for dismissal of the appeal.

10. Keeping in view the submission made by the learned counsel for the appellants/claimants and the learned counsel for the second respondent, this Court has gone through the materials on record. It is seen from the records that the Tribunal has also accepted the fact that the deceased was a coolie at the time of accident and the claim is made at Rs.15000/- p.m., The Tribunal held that in the absence of any proof for income, claiming a sum of Rs.15,000 p.m., is not reasonable. But the tribunal has taken Rs.4000/- p.m., The claim application filed by the eight claimants claiming that the deceased was the only bread winner and support of the family and the first petitioner claims herself as a wife of the deceased who is aged about 57 years old. Therefore, this court is of the view that the income taken by the Tribunal is very much on the meagre side and the same needs interference.

11. In the claim application, the age of the deceased was mentioned as 60 years but there is no proof for the same. However, based on the post-mortem certificate, the Tribunal considered the age of the deceased as 70 years and has taken his monthly income of the deceased at Rs.4000/- p.m., But, taking the number of claimants/dependants as well as occupation of the deceased as coolie, this court is of the view that it would be reasonable to fix the notional income of the deceased at Rs.6,000/- p.m. Accordingly, this Court fix at Rs.6,000/- as notional income of the deceased and calculated the loss of income at Rs.2,70,000/-. Hence, this court enhanced the monthly income from Rs.4000/- to Rs.6000/-. Further on perusal of records, the Tribunal has not award any

sum for loss of love and affection for which the claimant is entitled to. Hence the sum of Rs.10,000/- under the head of loss of love and affection is awarded. Insofar as the compensation awarded under the heads of i) loss of estate and ii) funeral expenses are concerned, the same are found just and fair and hence, they stand confirmed.

Thus, the total compensation payable to the appellants/claimants are as hereunder:-

Sl.No.	***Head***	***Amount awarded by the Tribunal***	***Amount awarded by this court***
1.	Loss of Income (6000x12x5)-1/4	Rs.1,89,000/-	Rs.2,70,000/-
2.	Loss of Estate	Rs. 15,000/-	Rs. 15,000/-
3.	Funeral Expenses	Rs. 15,000/-	Rs. 15,000/-
4.	Loss of love & Affection	---	Rs. 10,000/-
	Total	**Rs.2,19,000/-**	**Rs.3,10,000/-**

12. Thus, the appellants/claimants are entitled to a sum of Rs.3,10,000/- together with interest at the rate of 7.5% per annum.

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.2,19,000/- to Rs.3,10,000/-, which shall carry interest at the rate of

7.5% per annum from the date of numbering of appeal till the date of deposit. The apportionment shall be as ordered by the Tribunal.

(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 second respondent/Insurance Company is directed to deposit the entire amount modified 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. On such deposit, the appellants-claimants 1 to 3 and 6 and 7 are permitted to withdraw the enhanced award amount along with interest and costs, less the amount if any, already withdrawn by filing necessary applications before the Tribunal. The share of the minor appellants 4 and 5 is directed to be deposited in any one of the Nationalised Banks till they attain majority. The third appellant being the mother of the minors 4 and 5 is permitted to withdraw the accrued interest once in three months for the welfare of the minors.

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Index : Yes/No
Speaking /Non-speaking order

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