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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.06.2019

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THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.1206 of 2014

1. R.Kothai Andal
2. S.Rama subbu

..Appellants/Claimants

Vs.

1. P.Chitrarasu
2. Iffco-Tokia General Insurance Co. Ltd.,
New No.28, Old No.195,
1st and 2nd Floor, North Usman Road,
T.Nagar, Chennai - 600017.

..Respondents/Respondents

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988, against the Judgment and Award dated 14.03.2013 made in M.C.O.P.No.1049 of 2009 on the file of the Motor Accident Claims Tribunal/XV Additional District Judge, Chennai, in disallowing a portion of the claim of the appellants.

For Appellants	:	Mr.N.Damodaran
For R2	:	Mr.C.R.Krishnamoorthy
		R1 - Served
		No Appearance

Judgment

This Civil Miscellaneous Appeal has been filed challenging the Award dated 14.03.2013 passed in M.C.O.P.No.1049 of 2009 by the Motor Accident Claims Tribunal (XV Additional District Judge), Chennai.

2. It is the case of the appellants is that on 25.09.2007 at about 22.00 hours., one Mr.Lakshmi Kanth @ Arun (deceased) was travelling in a Scorpio bearing Registration No.TN-20 AR 7220 from Kodaikkanal to Chennai at Dindugul and Trichy Main Raod, near ESSR Petrol Bunk, Manjampatti, Manapparai. At that time, a Lorry bearing Registration No.TN-31 L 6746 which was parked ahead of the Scorpio on the left side of the road, without any signal or indicator, took a sudden right in a rash and negligent manner and dashed against the Scorpio. As a result, the Lakshmi



Kanth sustained grievous injuries and he died at the hospital on 26.09.2007. At the time of accident, he was not married and he was working as a Software Tester Trainee in a private company and he was earning Rs.7,600/- per month. Since he died in the accident, his parents, appellants herein, have filed a Claim Petition before the Motor Accident Claims Tribunal (XV Additional District Judge), Chennai, against the owner and insurer of the vehicle, respondents herein, claiming Rs.20,00,000/- as compensation.

3. Denying the allegations of the appellants/claimants, the second respondent insurance company filed a counter affidavit before the Tribunal, submitting that the accident happened only due to the negligent driving of the deceased and there is no negligence by the driver of the first respondent's lorry. It has been further submitted that the claimants have not produced any document to prove the age and occupation of the deceased and they have also not produced any documentary evidence to prove their relationship with the deceased. Hence, sought for dismissal of the petition with costs.

4. During the trial before the Tribunal, on the side of the claimants, Rama Subbu himself was examined as P.W.1 and one Mr.Venkateshwaran who is the eye-witness of the accident was examined as P.W.2 and the following documents were marked.

Ex.P1 : Copy of FIR
Ex.P2 : Copy of Rough Sketch
Ex.P3 : Copy of Charge Sheet
Ex.P4 : Postmortem Certificate
Ex.P5 : Legal Heir Certificate
Ex.P6 : Copy of Ration Card
Ex.P7 : B.E. Degree Certificate
Ex.P8 : Appointment Order
Ex.P9 : Pay Slip
Ex.P10 : Bank Pass Book
Ex.P11 : Driving Licence

The first respondent was absent and he was set exparte. On the side of the second respondent, one Mr.Kumbarajan was examined as R.W.1 and the following documents were marked.

Ex.R1 : Copy of List of witnesses and 161 Statements
Ex.R2 : Copy of Charge Sheet
Ex.R3 : Copy of Case Diary

5. The Tribunal, considering the pleadings, oral and documentary evidence, allowed the petition in favour of the



claimants and awarded Rs.6,65,000/- as compensation to the claimants. Aggrieved by the award, the claimants have filed this appeal before this Court.

6. On perusal of the award 14.03.2013 passed by the Motor Accident Claims Tribunal (XV Additional District Judge), Chennai, it is seen that the second respondent has not produced any investigation report to prove the negligence of the driver of the deceased and therefore, the Tribunal has come to the conclusion that the accident happened only due to the negligence of the first respondent's lorry driver. It is further seen that the appointment order and the salary slip of the deceased have been placed before the Tribunal to prove the income of the deceased and based on which, the Tribunal has fixed the monthly income of the deceased as Rs.7,600/- as claimed in the Petition. Since the deceased was a bachelor at the time of accident, the Tribunal has deducted 50% of the income i.e. Rs.3,800 for personal expenses of the deceased and 50% of the income for family expenses of the deceased.

7. As per the case Sarla Verma and others vs Delhi Transport Corporation and another reported in 2009 ACJ 1298, the multiple to be adopted as 18 as the deceased was aged 24 years at the time of accident, whereas, the Tribunal has taken the multiplier as 8 in the impugned Award. The sum awarded towards transport expenses is found to be reasonable, but the 50% added towards future prospects and the 1 Lakh awarded towards Loss of Love and Affection are excess, and also the Tribunal has not awarded any amount towards Loss of Estate.

8. For the aforesaid reasons, this Court is of the considered view that the Award passed by the Tribunal shall be modified in the following manner :

Income to be taken	- Rs.7,600/-
Adding future prospects	- 40%
Income	- Rs.10,640/-
Deductions of 50% for personal expenses of the deceased (10640-5320x12x18)	- Rs.11,49,120/-
Funeral Expenses	- Rs.10,000/-
Transport Expenses	- Rs.7,800/-
Loss of Love and Affection	- Rs.20,000/-
Loss of Estate	- Rs.12,200/-

Rs.11,99,120/-

9. This Court is of the considered view that Rs.11,99,120/- shall be awarded to the Appellants instead of Rs.6,65,000/-



awarded by the Tribunal under the impugned Award. Since the Appellants have paid Court fee only for Rs.6,65,000/- in this appeal, this Court directs the Appellants to pay the Court fee for the balance amount of Rs.5,34,120/- (Rs.11,99,120/- Rs.6,65,000/-), which the Registry shall collect before drafting the decree.

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.6,65,000/- is hereby enhanced to Rs.11,99,120/- with interest at the rate of 6% per annum from the date of petition till the date of deposit. The second respondent insurance company is directed to deposit the enhanced award amount to the Credit of M.C.O.P.No.1049 of 2009 on the file of the Motor Accident Claims Tribunal (XV Additional District Judge), Chennai, along with interest and costs as determined by this Court, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the appellants are permitted to withdraw the amount, less the amount if any, already withdrawn, by filing an appropriate application before the Court concerned. No costs.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

The Motor Accident Claims Tribunal
(XV Additional District Judge), Chennai.

Copy To: The Section Officer, V.R.Section,
High Court of Madras, Chennai -104.

+1 cc to M/s.C.R.Krishnamurthy, Advocate Sr.No. 51438

+1 cc to Mr.N.Damodaran, Advocate SR.No.51914

AKM/08.01.2020/4P-5C /

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