IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.02.2019
PRONOUNCED ON: 15.02.2019

CORAM :

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A.No.687 of 2014

1.Kasiyammal
2.Annamalai
3.Minor. Marimuthu ... Appellants/Petitioners

Vs

1.Bajari
(Since the first respondent remained ex parte before the Tribunal his presence may be dispensed with)

2.The Divisional Manager,
IFFCO Tokyo General United Insurance Company Limited,
Having Office at
Door No.28 II Floor,
North Usman Road,
T.Nagar, Chennai. ... Respondents/Respondents

PRAYER : Civil Miscellaneous Appeal filed against the Judgment and Decree dated 25.08.2012 and made in MACTOP.No.1032 of 2008 on the file of the Motor Accident Claims Tribunal, District Judge, Thiruvannamalai.

For Appellants : Mrs.M.Malar

For Respondent 2: Mr.Michael Visuvasam

J U D G M E N T

The instant appeal has been filed by the claimants seeking enhancement of compensation challenging the order dated 25.08.2012 passed by the learned Motor Accident Claims Tribunal, District Judge, Thiruvannamalai in MACTOP.No.1032 of 2008.

Brief facts of the case are as follows:

2. On 29.08.2008 at about 7.00 p.m when the deceased Raja was returning after finishing his agricultural work at his land,

to his house, while he was coming on the left hand side of the road, near Government High School, C.Sorpandnandal. In Thandarampattu-Chengam Road, the first respondent drove his Bajaj C.D., two wheeler bearing registration No.TN25 K 6635 in a rash and negligent manner without sounding horn, and dashed against the deceased Raja and caused the accident. Due to the accident, the deceased Raja was thrown out and sustained injuries all over the body and immediately, the deceased Raja was admitted in the Chengam Government Hospital, then he was transferred to the Pondicherry Government Hospital, and after treatment, he died on 31.08.2008. The claimants preferred a compensation claim before the Motor Accident Claims Tribunal seeking a compensation of Rs.10,00,000/- against the respondents for the death of Raja.

3. On behalf of the claimants, PW1 who is the wife of the deceased Raja and PW2, an eye-witness to the accident were examined and on behalf of the respondent Corporation, RW1 & RW2 were examined before the Tribunal. On the Appellants' side, attested xerox copy of the First Information Report, attested xerox copy of the requisition letter given to the Inspector of Police, Melchengam to the Judicial Magistrate, Chengam to alter the FIR, attested xerox copy of the accident registrar, attested xerox copy of the Postmorterm certificate, attested xerox copy of the registration certificate on the offending vehicle and attested xerox copy of the Insurance policy were marked as Ex.P1 to Ex.P6 and on the respondents side, letter addressed by the RTO Tiruvannamalai, xerox copy of the investigation report, xerox copy of the insurance policy, office copy of the lawyer's notice issued by the 2nd respondent insurance company through its counsel to the first respondent, acknowledgment card signed by the 1st respondent were marked as Ex.R1 to Ex.R5.

4. After examining various aspects the Tribunal passed an Award dated 25.08.2012 by directing the second respondent insurance company to pay the appellants a sum of Rs.4,37,000/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realisation and set the first respondent ex parte.

5. Aggrieved by the Award dated 25.08.2012, the appellants preferred this appeal seeking enhancement of compensation.

6. Heard learned counsel for the Appellants and learned counsel for the second respondent. The first respondent was remained ex parte both before the Tribunal as well as this Court.

7. Learned counsel for the Appellants submitted that the

deceased Raja was aged 50 years at the time of accident and was an agriculturist and was earning Rs.5,000/- per month whereas the Tribunal has taken the income of the deceased as Rs.4,500/- per month, which is very much lower than the standard income as determined by the Hon'ble Supreme Court. The learned counsel drew the attention of this Court to the Division Bench Judgment of the Hon'ble Supreme Court in the case of Syed Sadiq, etc vs. Divisional Manager, United India Insurance Co. Ltd., reported in 2014 (1) TN MAC 459 (SC) wherein the Hon'ble Supreme Court has fixed the income for the Vegetable vendor as Rs.6,500/- per month for the accident of the year 2008 for the purpose of calculation of the loss of income of the dependents/Appellants. Therefore, the learned counsel for the Appellants insisted this Court to fix the monthly income of the deceased at Rs.5,000/- at the time of his death.

8. The learned counsel for the Appellants also contended that the Tribunal has not awarded future prospects under the Award and has also erroneously adopted 11 multiplier for calculating the loss of earnings. The learned counsel for the Appellants further contended that the Tribunal has awarded the compensation under the heads loss of consortium, loss of love and affection, funeral expenses and for transportation is very meagre and also not awarded any compensation towards loss of estate.

9. Per contra, learned counsel for the second respondent would submit that the amount awarded by the Tribunal is a fair and just compensation.

10. After examining the impugned award and after hearing the submissions of the learned counsels and considering the facts and circumstances of the instant case and as per the principles laid down by the Hon'ble Apex Court in the Syed Sadiq's case, it would appropriate for this Court to fix the notional income of the deceased at the time of accident for the purpose of calculating the pecuniary benefits as Rs.5,000/- per month. As per the Constitution Bench Judgment of the Hon'ble Supreme Court in the case of National Insurance Company Limited vs. Pranay Shethi and Others reported in (2017) 16 SCC 680, future prospects will be fixed at 25%, since the injured was an agriculturist and aged 50 years at the time of accident. The Tribunal has rightly adopted 13 multiplier and deducted 1/3rd towards personal expenses are reasonable for the calculating the loss of dependency as per the dictum laid down by the Hon'ble Supreme Court in the case of Sarla Verma v. Delhi Transport Corporation reported in (2009) 6 SCC 121. Therefore, calculation for loss of dependency is that Rs.5000 x 12 x 13= 780000 + 25% =975000 - 1/3rd = Rs. 6,50,000/-.

11. The Tribunal has erroneously awarded only a sum of Rs.10,000/- towards loss of consortium, Rs.10,000 towards Funeral expenses and for transportation whereas this Court is also inclined to award a sum of Rs.15,000/- towards Funeral Expenses, Rs,40,000/- towards loss of consortium and Rs.10,000/- towards transportation as held by the Hon'ble Supreme Court in the Pranay Sethi's case cited supra.

12. The Tribunal has awarded only a sum of Rs.20,000/- towards loss of love and affection. However, this Court is inclined to increase the award amount to Rs.80,000/-, out of which, the second and third Appellants are entitled for a sum of Rs.40,000/- each. The Tribunal has also not awarded any compensation towards loss of estate, whereas this Court is inclined to award a sum of Rs.15,000/- towards loss of estate as held by the Hon'ble Supreme Court in the Pranay Sethi's case cited supra. This court is also of the considered view that the Tribunal has rightly awarded a sum of Rs.1,000/- towards Damage to cloth and articles.

13. Hence the total compensation payable to the appellants are as follows:-

| Head | Award Amount (Rs.) |
|---|---|
| Loss of Dependency | 6,50,000/- |
| Loss of consortium | 40,000/- |
| Loss of love and affection | 80,000/- |
| Loss of estate | 15,000/- |
| Funeral expenses | 15,000/- |
| Transportation | 10,000/- |
| Damage to cloth and articles | 1,000/- |
| Total | 8,11,000/- |

Out of the total compensation amount of Rs.8,11,000/-, the first Appellant is entitled for Rs.4,11,000/-, the second and third Appellants are entitled for Rs.2,00,000/- each.

14. In the light of the above observation, the amount awarded by the Tribunal is modified by enhancing the award from Rs.4,37,000/- to Rs.8,11,000/- and the Insurance Company/second respondent is directed to deposit the modified award amount, after deducting the amount already deposited, if any, together with interest at the rate of 7.5% per annum from the date of claim till the date of deposit within a period of six weeks from the date of claim till the date of deposit to the credit of

MACTOP.No.1032 of 2008 on the file of the Motor Accident Claims Tribunal, District Judge, Thiruvannamalai. The Appellants are directed to pay the deficit court fee.

15. On such deposit being made, the Tribunal shall transfer the share of award amount of the first and second Appellants to their respective personal accounts through RTGS. Since the third Appellant is minor, her respective share shall be deposited in any one of the nationalised banks till she attains majority and the first Appellant/guardian/mother of the third Appellant is permitted to withdraw the interest accrued once in six months.

16. In the result, the Civil Miscellaneous Appeal is partly allowed. No costs.

Sd/-
Assistant Registrar(CS-VI)

//True copy//

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal,
District Judge, Thiruvannamalai.

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

+1cc to Mrs.M.Malar, Advocate SR.No.14381

+1cc to Mr.Michael Visuvasam, Advocate SR.No.14021



C.M.A.No.687 of 2014

MG(CO)
GMY(17/09/2019)