IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.10.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.1658 of 2017

1.C.Mahalakshmi
2.C.Muthu Kumar
3.C.Dinesh Kumar ... Appellants

Vs

1.K.Ranjith Kumar

2.Reliance General Insurance Co. Ltd.,
RAI's Tower, Plot No.2054, 2nd Avenue,
2nd Floor, Anna Nagar,
Chennai - 600 040. ... Respondents

Appeal under Section 173 of the Motor Vehicles Act against the judgment and decree dated 06.01.2017 made in MACTOP No.4426 of 2013 on the file of the Chief Small Causes Court (Motor Accident Claims Tribunal) Chennai.

For Appellants : Mr. R.Kalaiarasan
for M/s.N.M.Muthurajan

For R2 : Mr.S.Arunkumar
For R1 : Exparte

JUDGMENT

The facts of the case are that on 04.04.2013 at about 12.00 noon, the deceased-Chelladurai was crossing Rajiv Gandhi Salai, Chennai, from West to East direction, by walk. When he reached near Mettukuppam Bus Stopping, the motorcycle bearing Reg.No.TN-07-BK-9657 belonging to the first respondent and insured with the second respondent Insurance Company, came from the opposite direction in a rash and negligent manner and dashed against the deceased. Due to the impact, the deceased sustained grievous injuries and he was taken to the Global Hospital, Perumbakkam, Chennai and he died during the course of treatment. The appellants / wife and sons of the deceased, filed a claim petition before the Tribunal seeking compensation of Rs.7,00,000/-. On consideration of the materials and evidence available on record, the Tribunal came to the conclusion that the accident had occurred only due to the rash and negligent

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riding of the rider of the motorcycle and awarded a total compensation of Rs.3,67,544/- with interest at the rate of 7.5% per annum from the date of petition.

2.Challenging the same, the appellants / claimants have come up with the present appeal, for enhancement of compensation.

3.The learned counsel for the appellants /claimants has submitted that though the deceased was earning Rs.40,000/- per month, the Tribunal has fixed a lesser sum of Rs.4,000/- per month towards income of the deceased, while awarding compensation under the head "loss of income". He also submitted that the amounts awarded by the Tribunal towards other heads are very low and hence, the same have to be enhanced substantially.

4.Per contra, the learned counsel for the second respondent/ insurance company has submitted that after properly analysing the materials and evidence, the Tribunal has awarded the compensation, which is just, fair and reasonable and hence, the same does not require any interference in the hands of this Court.

5.Heard the learned counsel for the appellant and the learned counsel for the second respondent and perused the materials and evidence available on record carefully and meticulously.

6.This is a claimants' appeal seeking enhancement of the compensation awarded by the Tribunal. Hence, this Court is not inclined to go into the findings of the Tribunal with respect of negligence as well as the liability of the second respondent insurance company to pay compensation.

7.The wife of the deceased was examined as P.W.1, who deposed in her evidence that the deceased was aged about 65 years; that he was running a hardware shop, viz. M/s.Venkateswara Hardwares and earning a sum of Rs.40,000/- per month. It is also stated in the claim petition that the deceased was an income tax assessee and to that effect, the claimants have produced Exs.P9 and P10 - Income tax Return and Bank Pass Book. In the income tax returns, the gross total income of the deceased has been mentioned as Rs.15,276/-. Further it is seen that the income tax return has been filed in the name of M/s.Venkateswara Hardwares and the business was not solely run by the deceased. As per Ex.P8-Partnership Deed, it is seen that the business has been run by the partners and the deceased was one of the partners. Taking note of the same, the Tribunal has fixed a sum of Rs.4,000/- per month as the monthly income of the deceased, deducted 1/3rd of the amount towards personal expenses of the deceased, adopted the multiplier of 7 and arrived at the compensation towards loss of income at Rs.2,24,028/-.

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Considering the materials and evidence available on record, this Court is of the considered view that the monthly income fixed by the Tribunal at Rs.4,000/- has to be enhanced to Rs.6,500/-. If that is done, the loss of income works out to Rs.3,64,000/- (Rs.6,500/- x 12 x 7 x 2/3). Accordingly, the amount awarded by the Tribunal towards loss of income stands modified to Rs.3,64,000/-. It would also be appropriate to enhance the compensation awarded by the Tribunal towards loss of consortium from Rs.25,000/- to Rs.40,000/-. The amounts awarded towards other heads are confirmed. The details of the modified compensation are as follows:

HEADS	AMOUNT (Rs.)
Loss of income	3,64,000/-
Loss of consortium	40,000/-
Loss of love and affection	30,000/-
Medical bills	58,516/-
Transport charges	5,000/-
Funeral expenses	25,000/-
TOTAL....	5,22,516/-

Thus, the appellants / claimants are entitled to the modified compensation of Rs.5,22,516/- with interest at the rate of 7.5% per annum from the date of petition. The shares of the claimants shall be in the same proportion as apportioned by the Tribunal. It is made clear that the appellants / claimants have to pay the appropriate Court fee in order to receive the awarded amount.

8.In the result, the appeal is partly allowed. No costs. The second respondent Insurance Company is directed to deposit the modified amount of compensation, as ordered above, less the amount if any already deposited, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the appellants / claimants are permitted to withdraw their respective shares, on making proper application before the Tribunal.

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Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

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

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

+1 cc to Mr.S.Arunkumar, Advocate,sr.88321

+1 cc to Mr.N.M.Muthurajan, Advocate,sr.87945.

Vba(co)
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