IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 12.11.2019
CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.2055 of 2017
and C.M.P. No.20658 of 2019

1.M.Murshida Begum
2.M.Azaruddin
3.M.Roshan Sabeedha (Minor)
(3rd Minor petitioner rep.by
their Mother and N.F. 1st appellant
Murshida) ... Appellants/ Petitioners

Vs.

1.Mohamed Hidayatullah

2.The New India Assurance Company Ltd.,
No.45, Moore Street,
Chennai - 600 001. ... Respondents/ Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree in MCOP No.3380 of 2012 dated 12.11.2014 on the file of II Judge, Small Causes Court (Motor Accidents Claims Tribunal), Chennai.

For Appellant : Mr.A.Shanmugaraj

For R2 : Mr.G.Udayasankar
For R1 : Ex-Parte

J U D G M E N T

The appellants/claimants filed M.C.O.P.No.3380 of 2012 on the file of the Motor Accident Claims Tribunal (II Judge), Small Causes Court, Chennai claiming a sum of Rs.17,00,000/- as compensation for the death of the husband of the first appellant, who died in a motor vehicle accident that took place on 20.03.2011.

2.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident had occurred only due to the rash and negligent driving of the driver of the car belonging to the first respondent and directed the second respondent-Insurance Company, being the insurer of the vehicle, to pay a sum of Rs.14,89,744/- with interest at the rate of 7.5% per annum from the date of petition, as compensation to the appellants/claimants.

3.Being dissatisfied with the quantum so awarded by the Tribunal, the appellants/claimants have come out with the present appeal, seeking enhancement of the same.

4.The learned counsel appearing for the appellants contended that the deceased was the proprietor of Sematy Garments and was earning a sum of Rs.1,80,000/- per annum. Though the appellants have marked copy of the income tax returns for the assessment years 2009-2010 & 2010-2011 to prove the income of the deceased, the Tribunal, on erroneous consideration, fixed the monthly income of the deceased at Rs.8,000/- as against Rs.15,000/-. After adding 30% towards future prospects, the Tribunal fixed the total monthly income of the deceased at Rs.10,400/- and deducting 1/3rd towards personal expenses and by adopting 14 multiplier, the pecuniary loss was arrived at Rs.11,64,744/- which is meagre. The learned counsel further contended that the compensation awarded by the Tribunal under other heads are also very meagre and hence, the same needs substantial enhancement.

5.Per contra, the learned counsel appearing for the second respondent-Insurance Company contended that the Tribunal, after analysing the materials available on record, rightly fixed the monthly income of the deceased at Rs.8,000/- which is reasonable. Considering the age of the deceased, the Tribunal further awarded Rs.2,400/- towards future prospects and after deducting 1/3rd towards personal expenses and by applying the correct multiplier of 14, arrived at a sum of Rs.11,64,744/- as compensation towards pecuniary loss which is reasonable. Hence, the learned counsel submitted that the compensation awarded by the Tribunal is just and reasonable and the same does not call for any interference by this Court.

6.Heard the learned counsel appearing for the appellants as well as the second respondent-Insurance Company and perused the materials available on record.

7.From the materials available on record, it is seen that the actual income to be taken into consideration for arriving at the compensation towards loss of income is Rs.15,000/-. The Tribunal, despite the fact that the appellants have already produced and marked income tax returns filed by the deceased for the assessment years 2009-2010 and 2010-2011, failed to correctly assess the monthly income of the deceased and erroneously fixed the same at Rs.8,000/- and after adding

Rs.2,400/- (30% of Rs.8,000/-) towards future prospects, arrived at Rs.10,400/- as the monthly income of the deceased.

8.Taking into consideration the income tax returns filed by the appellants, the monthly income of the deceased is fixed at Rs.15,000/-. Following the judgment of the Hon'ble Apex Court in National Insurance Co. Ltd., v. Pranay Sethi & others reported in 2017 (2) TNMAC 609 (SC), 25% of the said amount is added towards future prospects. Accordingly, Rs.3,750/- [25% of Rs.15,000/-] is added to Rs.15,000/- and the total monthly income of the deceased is arrived at Rs.18,750/-. After deducting 1/3rd towards personal expenses of the deceased and applying the multiplier of 14, the pecuniary loss is arrived at Rs.21,00,000/- [18,750 x 2/3 x 12 x 14]. Accordingly, the compensation awarded by the Tribunal towards pecuniary loss stands modified to Rs.21,00,000/-. The amounts awarded by the Tribunal at Rs.1,00,000/- towards loss of consortium to the 1st appellant, Rs.25,000/- towards funeral expenses and Rs.2,00,000/- towards loss of love and affection to the appellants 2 and 3, are just and reasonable and hence the same are confirmed. Thus, the appellants / claimants are entitled to the modified compensation of Rs.24,25,000/-.

9.The appellants have also filed a petition in C.M.P.No.20658 of 2019 for enhancing the claim amount from Rs.17,00,000/- to Rs.22,70,000/-. It is well settled that the Tribunal and Courts have ample powers to award just compensation even more than the amounts claimed by the claimants. Hence, this Court is inclined to award a sum of Rs.24,25,000/- as compensation to the appellants/claimants.

10.Since this Court has enhanced the quantum of compensation more than the amount claimed by the appellants / claimants and also considering the facts and circumstances of the case, this Court deems it fit to grant interest in respect of the enhanced amount of compensation, only from the date of filing of this appeal. Thus it is made clear that only for the compensation of Rs.14,89,744/- awarded by the Tribunal, the interest rate of 7.5% per annum shall be calculated from the date of claim petition. For the enhanced amount of Rs.9,35,256/-, the interest rate of 7.5% per annum shall be calculated from the date of filing of this appeal. It is also made clear that the claimants have to pay the appropriate Court fee in order to receive the awarded amount.

11.The Civil Miscellaneous Appeal is disposed of accordingly. No costs. Consequently, C.M.P.No.20658 of 2019 is closed. The 2nd respondent-Insurance Company is directed to deposit the modified amount of compensation, as ordered above, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. The third appellant minor would have attained majority by now. Hence, on such deposit being made, the appellants / claimants are permitted to withdraw the same on making proper application before the Tribunal. The shares of the appellants / claimants will be in the same proportion, as apportioned by the Tribunal.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

rgr/km

To

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

2. The Record Keeper,
   V.R.Section,
   High Court,
   Chennai.

+1cc to Mr.G.Udhayasankar , Advocate SR.No. 93575
+1cc to Mr.A.Shanmugaraj, Advocate SR.No. 94086

C.M.A.No.2055 of 2017
and C.M.P.No.20658 of 2019

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