IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 04.10.2019
CORAM
THE HONOURABLE MR.JUSTICE R.MAHADEVAN
C.M.A.No.466 of 2017

1. Amul
2. Diwakar
3. Divya
4. Nagavalli ... Appellants

(Cause title accepted vide Court Order dated 25.04.2013 in MP 1/2013 in CMA.SR.11308/2013)

Vs

1. Dhandapani
2. The Divisional Manager,
The United India Insurance Company Limited,
No.46, Katpadi Road,
Vellore. ... Respondents

Appeal under Section 173 of the Motor Vehicles Act against the judgment and decree dated 25.10.2006 made in MACTOP No.128 of 2006 on the file of the Motor Accident Claims Tribunal District Judge, Thiruvannamalai.

For Appellants : Mrs.M.Malar
For R2 : S.Arunkumar
For R1 : Ex-Parte

JUDGMENT

This appeal is preferred by the appellants/claimants against the award of a sum of Rs.3,27,000/- towards compensation due to the death of the husband of the first respondent, in a motor vehicle accident.

2.The case in brief, is as follows:
On the fateful day, ie. on 13.01.2006, at about 11.45 pm, the deceased Dass @ Ekambaram was travelling in the bus bearing Reg.No.PY-04-Y-7699 belonging to the first respondent and insured with the second respondent insurance company. The bus was fully packed with passengers and the deceased was travelling on the top of the bus. The bus was proceeding on the Nethapanatham Salai, Muthukarai. Due to the rash and negligent driving of the driver of the bus, the bus hit against a tree. Due to the said impact, the deceased sustained grievous and multiple injuries. The deceased was taken to the Government Hospital, Chengalpattu and thereafter he succumbed to the

injuries in the Government General Hospital, Chennai. The legal heirs of the deceased filed a claim petition before the Tribunal claiming a sum of Rs.10,00,000/- as compensation. On consideration of the materials and evidence available on record, the Tribunal has awarded a total compensation of Rs.3,27,000/- with interest at the rate of 7.5% per annum from the date of petition. Since the deceased travelled on the roof of the bus violating the policy conditions, the Tribunal, while directing the insurance company to pay compensation to the claimant, given liberty to recover the same from the owner of the vehicle.

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

4.The learned counsel for the appellants /claimants has submitted that the Tribunal ought to have fixed higher amount in determining the monthly income of the deceased, while awarding compensation. It is also submitted that the amounts awarded towards other heads are very low. Stating so, the learned counsel prayed for enhancement of compensation.

5.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 and reasonable and hence, the same does not require any interference in the hands of this Court.

6.Heard the learned counsel for the appellants and the learned counsel for the second respondent and perused the materials available on record.

7.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.

8.The wife of the deceased was examined as P.W.1 before the Tribunal, who deposed in her evidence that the deceased was aged about 37 years and was earning a sum of Rs.6,000/- per month as a Mason. However, no proof was produced to substantiate the same. In the absence of any evidence, the Tribunal has fixed the monthly income of the deceased at Rs.2,500/-, calculated the annual income at Rs.30,000/-, deducted 1/3rd of the amount towards his personal expenses, adopted the multiplier of 16 and arrived at Rs.3,20,000/- towards loss of income. This Court is of the considered view that the monthly income fixed by the Tribunal is on the lower side and it would be appropriate to fix the same at Rs.4,500/-. Further, the Tribunal has not awarded any amount towards future prospects. As per the judgment of the

Honourable Supreme Court in the case of National Insurance Company Limited Vs. Pranay Sethi, reported in 2017-13 SCALE 12, the deceased is entitled to 40% of the monthly income towards future prospects and the said 40% has to be added to the monthly income in arriving at the total monthly income, since the deceased was aged 37 years at the time of accident. Further, the deduction of 1/3rd of the amount by the Tribunal is improper and it would be appropriate to deduct only 1/4th of the amount towards personal expenses of the deceased, since there are four dependents. As per the judgment of the Hon'ble Supreme Court reported in 2009 (2) TN MAC 1 SC [Sarala Verma and Others Vs. Delhi Transport Corporation and another], the multiplier that should be adopted for the age of 37 is 15. If all these aspects are taken into consideration, the amount towards loss of income works out to Rs.8,50,500/- [(Rs.4500/- + Rs.1800) x 12 x 15 x ¾]. Accordingly, the loss of income awarded by the Tribunal stands modified to Rs.8,50,500/-. The Tribunal has awarded a sum of Rs.2,000/- towards funeral expenses and Rs.5,000/- towards loss of consortium. It would be appropriate to enhance the amount awarded towards funeral expenses to Rs.15,000/-. Since no amount has been awarded under the head "loss of love and affection" and considering the age of the deceased, who was 37 years at the time of accident, it would be appropriate to enhance the amount awarded towards loss of consortium to Rs.1,00,000/-. Further, awarding a sum of Rs.15,000/- towards loss of estate and a sum of Rs.10,000/- towards transport expenses, will meet the ends of justice.

9. The details of the modified compensation are as follows:

HEADS	AMOUNT (Rs.)
Loss of income	8,50,500/-
Funeral expenses	15,000/-
Loss of consortium	1,00,000/-
Loss of estate	15,000/-
Transport expenses	10,000/-
TOTAL....	9,90,500/-

Thus, the appellants / claimants are entitled to the modified compensation of Rs.9,90,500/-.

10.The present appeal was filed by the claimants with a delay of 2152 days. This Court is of the considered view that the Insurance Company cannot be mulcted with liability of paying interest for the delayed period in respect of the enhanced amount of compensation, since the said delay had not occurred on their side. In the circumstances, it is made clear that only for the compensation of Rs.3,27,000/- 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.6,63,500/-, the interest rate of 7.5% shall be calculated from the date of filing of this appeal. The shares of the claimants shall be in the same proportion as apportioned by the Tribunal. It is also made clear that the claimants have to pay the appropriate Court fee in order to receive the awarded amount.

11.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. It is needless to state that thereafter, the Insurance Company can proceed against the owner of the vehicle to recover the compensation, as ordered by the Tribunal.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

av/km

To

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

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

+1cc to Mr.S.Arunkumar, Advocate, SR.No.85229.

C.M.A.No.466 of 2017

RR(CO)
CSR 21.04.2021