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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2019

CORAM:

THE HON'BLE Mr. JUSTICE R.MAHADEVAN

C.M.A.No.544 of 2017

Jeyakodi

...Appellant/Claimant

..vs..

1. M/s. Deepam Construction,
No.4 By-pass Road, Gandhi Nagar, Tiruvannamalai

2. The United India Insurance Co. Ltd.,
No.95 Big Street, Tiruvannamalai

3. Vellachi

4. Unnamalai

... Respondents /
Respondents before the Tribunal.

Appeal filed under Section 173 of Motor Vehicles Act 1988, against the Judgment and Decree, dated 31.10.2012 made in M.C.O.P.No.27 of 2000 on the file of the Motor Vehicles Accident Claims Tribunal, Additional District Judge cum Chief Judicial Magistrate, Thiruvannamalai District.

For Appellant : M/s. M.Malar
For Respondents : Mr. M.Krishnamoorthy, for R-2.

J U D G M E N T

This appeal is filed by one among the three claimants, who is the wife of the deceased, seeking enhancement of the award passed by the Claims Tribunal.

2. The wife of one Elumalai has filed a claim petition claiming a sum of Rs.3,00,000/- as total compensation. The parents of the deceased have been arrayed as respondents 3 and 4 and after the filing of the claim petition, the third respondent died and hence the Legal Representative of the third respondent (daughter of the R-3, who is also the sister of the deceased) was arrayed as fifth respondent, in the MCOP before the Tribunal.



3. The case of the claimant is that on 26.11.1999 at about 08.10 am, while the deceased Elumalai was riding his cycle, from North to South, near Fire Station at Tiruvannamalai, the first respondent's lorry bearing Registration No.TN25-B-0362 coming in the same direction, in a rash and negligent manner, dashed against the deceased. Due to the impact, the deceased sustained multiple grievous injuries on his head, hands and legs and died on the way to the hospital. It was her further case that, at the time of accident, the deceased was aged 25 years, working as a Mason, earning Rs.3,000/- per month and he was the only breadwinner of the family. So stating, the claimant has filed the claim petition.

4. The Claims Tribunal, after consideration of the materials, has passed an award for Rs.1,60,000/- in favour of the appellant, respondents 3 and 4 herein, the breakup details of which reads thus:

Loss of dependency	-	Rs.1,44,000/-
(Rs.1,200/- x 12 x 2/3 x 15)		
Loss of consortium to wife	-	Rs. 10,000/-
Funeral expenses	-	Rs. 6,000/-

Total	-	Rs.1,60,000/-

5. While calculating the loss of dependency, the Tribunal has taken the day's income of the deceased at Rs.60/- and calculated for 20 days in a month and has arrived at the monthly income of the deceased at Rs.1,200/-. The Tribunal has deducted 1/3rd towards the personal expenses of the deceased, applied the multiplier of 15 and has arrived at the loss of dependency at Rs.1,44,000/-.

6. The learned counsel appearing for the appellant / claimant would submit that the monthly income of the deceased should have been fixed at Rs.2,000/- based on the Minimum Wages payable to the Mason during the relevant point of time.

6.1. Whereas the learned counsel appearing for the second respondent / Insurance Company would submit that the Tribunal has correctly arrived at the loss of dependency which does not require any interference by this Court.

7. As far as the negligent aspect is concerned, the Tribunal based on the evidence and documents account has fastened the liability on the Insured and Insurer, which in the opinion of this Court, is correct and does not require any interference.



8. This Court is of the view that fixing the monthly income at Rs.1,500/- (taking the day's income at Rs.60/-) would be justifiable, since at the date of accident, viz., 26.11.1999, the deceased was aged 25 years and would be getting a work for minimum of 25 days. Also, the multiplier adopted and the personal expenses deducted by the Tribunal are based on the settled principles of law and hence the same are taken as such. If the said yardstick is adopted, the loss of dependency would be Rs.1,80,000/- (Rs.1,500/- x 12 x 15 x 2/3).

9. Excepting the head under 'loss of dependency', this Court is of the view that there is no ground made out or any arguments advanced by the claimant / appellant to increase the compensation amount under any of the heads. Hence, the amounts awarded under the heads, loss of consortium to the claimant / appellant and funeral expenses at Rs.10,000/- and Rs.6,000/- respectively are confirmed as such.

10. In view of the above reasonings, the re-structured breakup details of the award of compensation read thus:-

Loss of income	-	Rs.1,80,000/-
(Rs.1,200/- x 12 x 15 x 2/3)		
Loss of consortium	-	Rs. 10,000/-
Funeral expenses	-	Rs. 6,000/-

		Rs.1,96,000/-

11. At this juncture, the learned counsel for the second respondent / Insurer submitted that, in this case, the date of accident was 26.11.1999, the judgment of the Tribunal was pronounced on 31.10.2002 and though the Appeal papers have been filed during 2009, the same was represented during 2017 only and hence, for the no fault on the part of the R-2, they cannot be saddled with interest at the rate of 7.5% from the date of petition.

11.1. The said submission has some force. Hence, considering the said submission, the interest payable is hereby ordered only from the date of filing of this Appeal and not from the date of petition.

12. In the result, the award is enhanced from Rs.1,60,000/- to Rs.1,96,000/- and this amount of compensation shall be deposited by the respondents 1 and 2, less the amount if any already deposited, along with interest at 7.5% per annum, from the date of numbering of Appeal (22.02.2017) till the date of deposit, within a period of six weeks from the date of receipt of a copy of this judgment. The share of the compensation amount shall be apportioned among the appellant / claimant and



Respondents 3 and 4 herein (mother and sister of the deceased), as per the proportion apportioned by the Claims Tribunal. On such deposit being made, the Tribunal shall transfer the respective shares of compensation amount, along with proportionate interest, to the appellant / claimant and respondents 3 and 4 herein within one week thereafter. The court fee for the enhanced compensation amount shall be deposited by the claimant / appellant and respondents 3 and 4 herein, in equal proportion, before receiving the copy of this judgment.

13. This Civil Miscellaneous Appeal is partly-allowed. No costs.

-s/d-

Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

srk

To

1.Motor Accident Claims Tribunal,
Additional District Judge cum
Chief Judicial Magistrate, Thiruvannamalai District.

2.The Section Officer, V.R.Section,
Madras High Court,
Chennai 104

+1 CC to Mr.M.Krishnamoorthy, Advocate sr 96326.

+1 CC to M/s.M. Malar, Advocate sr 96631.

C.M.A.No.544 of 2017

PA(CO)
SP(17/08/2021)