BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 07.11.2019
CORAM:
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY
CMA(MD).No.599 of 2019

1.Hema
2.Sivanathan
3.Minor. Maheswaram
(Minor rep. by 1st petitioner his mother)
.. Appellants / Claimants

1.Manikandan

2.The Branch Manager,
ICICI Lombard General Insurance Company Limited,
Of.No.07, Ward C,
Swarnambigai Plaza,
Near Adayar Ananda Bhavan,
Salem- 636 009. ..Respondents / Respondents

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, against the award passed in MCOP.No.70 of 2013, dated 11.08.2018, by the Motor Accidents Claims Tribunal Cum Special Sub Court, Vedasanthur.

For appellants	:	Mr. S.Pugalendhi
For 1st respondent	:	No appearance
For 2nd respondent	:	Mr.K.K.Ramakrishnan

JUDGMENT

This Civil Miscellaneous Appeal is filed against the award passed in MCOP.No.70 of 2013, dated 11.08.2018, by the Motor Accidents Claims Tribunal cum Special Sub Court, Vedasanthur.

2. On 26.01.2013 at about 7.30 a.m., near Chavadi, Chinnakuravankudi road, while the deceased by name Hemkumar @ Preamkumar, who was aged about 11 years at the time of accident, was moving along with his father and relatives in barefoot walking to Palani on the extreme left side of Trichy – Dindigul four ways road, the first respondent's vehicle bearing Regn.No. TN 41 AE 4389 Mahindra Bolero Pick up Van, which was driven by its driver in a rash and negligent manner, dashed against the deceased and his father. Due to the said accident, the deceased sustained multiple injuries and died. The legal heirs of the deceased filed the claim petition in MCOP.No.70 of 2013, on the file of Motor Accidents Claims Tribunal - Cum - Special Sub Court, Vedasanthur, claiming a sum of Rs.10,00,000/- as compensation.

3. The Tribunal, considering the pleadings, oral and documentary evidence let in by the parties, awarded a sum of Rs.4,20,000/- together with interest at 7.5% per annum as compensation to the respondents / claimants in the following heads:

S.No.	Particulars	Amount
1.	Loss of income	3,90,000.00
2.	Loss of Estate	15,000
3.	Funeral Expenses	15,000
	Total	4,20,000

4. Not being satisfied with the quantum of compensation awarded by the Tribunal, the appellants / claimants have filed the present appeal seeking to enhance the same.

5. The learned counsel appearing for the appellants / claimants would submit that the Tribunal has taken only a meagre sum of Rs.30,000/- as notional annual income of the deceased and awarded Rs.3,90,000/- (Rs.30,000/- x 13 = Rs.3,90,000/-) towards loss of income, by applying multiplier method. The notional income of Rs.30,000/- per annum taken by the Tribunal for the deceased is very meagre and the Tribunal ought to have taken a sum of Rs.60,000/- as notional annual income of the deceased. He further contended that in the present case the accident is of the year 2013. The Hon'ble Supreme Court has fixed Rs.30,000/- p.a. as notional income for a 10 years old student for the accident occurred in the year 1992. A learned Single Judge of this Court also has fixed Rs.60,000/- p.a. as notional income for the fatal accident of 7th standard student reported in the case of **2017(2) TNMAC 702 (J.Kanagaraj and others Vs. Metropolitan Transport Corporation Ltd.).** He would further contend that no amount was added towards future prospects. As per the Judgment of the Hon'ble Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and others***, reported in ***2017 (2) TNMAC 609(SC),*** 40% of the income ought to have been added by the Tribunal in the annual income of the deceased towards future prospects. He would further submit that instead of adopting the correct multiplier No.15, the Tribunal has wrongly adopted multiplier No.13.

6. The learned counsel appearing for the 2nd respondent / Insurance Company would submit that the notional income fixed by the Tribunal at Rs.30,000/- is just and fair. Therefore, the award passed by the Tribunal need not be interfered with.

7. Taking into consideration of the submission made by

the learned counsel appearing for the appellant and in view of the settled proposition of law and the Judgment of the Hon'ble Supreme Court ***Pranay Sethi case*** stated supra this Court in J.Kanagaraj and others cited supra, this Court is of the view that it would be appropriate to fix Rs.50,000/- p.a. as notional income of the deceased instead of Rs. 30,000/- p.a. and by applying correct multiplier 15 and adding 40% towards future prospectus, the total loss of income comes to Rs.10,50,000/-.

Rs.50,000/- x 15 = Rs.7,50,000/- + 40%
= Rs.7,50,000/- + Rs.3,00,000/-
= Rs.10,50,000/-

After deducting 50% towards personal expenses, the loss of income would come to Rs.5,25,000/-. Further, the Tribunal has not awarded any amount towards loss of love and affection to the claimants and Transportation charges and hence, a sum of Rs.30,000/- is hereby awarded towards loss of love and affection to the appellants/claimants and a sum of Rs.10,000/- is hereby awarded towards Transportation. In all other aspects, the award passed by the Tribunal is just and fair and hence, the same is hereby confirmed. Accordingly, the amount awarded by the Tribunal is enhanced from Rs.4,20,000/- to Rs.5,95,000/- along with interest at 7.5% per annum from the date of petition till the date of deposit as stated below:

S. No.	Particulars	Amount
1.	Loss of income	5,25,000.00
2.	Loss of love and affection (Rs.10,000/- each)	30,000.00
3.	Transportation	10,000.00
4.	Loss of Estate	15,000.00
5.	Funeral expenses	15,000.00
	Total	**5,95,000.00**

8. The 2nd respondent / Insurance Company is directed to deposit the entire award amount i.e., Rs.5,95,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit, within a period of eight weeks from the date of receipt of a copy of this order, after deducting the amount already deposited if any. The appellants 1 and 2 / claimants 1 and 2 are entitled to a sum of Rs.2,00,000/- each together with interest and the 3rd respondent minor is entitled to a sum of Rs.1,95,000/- together with interest. On such deposit, the Tribunal is directed to transfer the share amount of the respondents 1 and 2 / claimants account by way of RTGS, within a period three weeks thereafter. Since the 3rd respondent is a

minor, the share of the third respondent shall be deposited in any one of the Nationalized Banks till he attains majority on re-investment scheme. The 1st appellant / guardian of minor claimant is entitled to withdraw the interest of minor share once in three months directly from the Bank.

9. Accordingly, this Civil Miscellaneous Appeal is partly allowed. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

trp

To

The Motor Accidents Claims Tribunal Cum
Special Sub Judge, Vedasanthur.

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The Section Officer
VR Section
Madurai Bench of Madras High Court, Madurai-2 copies

+1 CC to Mr.S. PUGALENDHI, Advocate (SR-97028[F] dated 08/11/2019)

+1 CC to Mr.K.K.RAMAKRISHNAN, Advocate (SR-97113[F] dated 08/11/2019)

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