IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.10.2020

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.No.2093 of 2005

(Through Video Conferencing)

1. Pushpa
2. Ravi
3. Lakshmi
4. Moorthy (Minor)
   (Rep by his M.N.F.Pushpa)

... Appellants/Petitioners

Vs.

1. M.Susainathan

2. The Chairman and Managing Director,
   United India Insurance Co.Ltd,
   Motor III Party Claims Office,
   No.38, Anna Salai, Chennai – 2.

(R1- exparte before the Tribunal)

... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 07.01.2004 and made in M.C.O.P.No.5318 of 2001, on the file of the Motor Accidents Claims Tribunal, (Chief Judge, Court of Small Causes) Chennai.

For Appellants : M/s.Jayanthi Bhaskaran for J.Mahalingam

For 2nd respondent: Mr.D.Bhaskaran

J U D G M E N T

The Civil Miscellaneous Appeal has been filed by the appellants-claimants against the impugned Judgment and Decree dated 07.01.2004 passed in M.C.O.P No.5318 of 2001 by the Motor Accident Claims Tribunal, Chief Judge, Court of Small Causes, Chennai.

2. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.9,77,232,/- together with interest at 9% per annum from the date of filing of the claim petition till the date of deposit, to the appellants/claimants. The appellants/claimants have filed this Civil Miscellaneous Appeal for enhancement of compensation. They are the wife and the children of the deceased B.Subramani.

3. The brief facts of the case are that the deceased B.Subramani, the husband of the 1st appellant and the father of the 2nd to 4th appellants, met with a motor accident on 22.11.2000 at about 5.30 p.m, when the deceased was standing at Pallikkaanai Bus stop, a tipper lorry bearing registration No.TN-28-X-9196, belonging to the 1st respondent insured with the 2nd respondent-Insurance Company, allegedly driven by its driver in a rash and negligent manner had knocked down the deceased Subramani, as a result of which, he sustained fatal injuries and died.

4. In the claim petition, it was stated that the deceased was aged about 40 years and therefore the correct multiplier to be applied was 14. The appellant seeks for enhancement of compensation towards 'future prospects' of the deceased and amounts awarded under the conventional heads which the Tribunal failed to award in the impugned Judgment and decree.

5. Per contra, the learned counsel for the 2nd respondent-Insurance Company submits that the impugned Judgment and decree was well reasoned and therefore requires no interference. On the other hand, it is submitted that the correct multiplier to be adopted was 13 since the deceased was aged about 45 years 10 months and 21 days at the time of accident. The learned counsel appearing for the 2nd respondent/Insurance Company submitted that the gross income of the deceased was Rs.10,286.86 per month. It included other benefits and therefore the Tribunal was not correct in considering a sum of Rs.9,112/- as net income for arriving at the aforesaid compensation.

6. I have considered the arguments advanced by the learned counsel for appellants and the 2nd respondent and I have also perused the Judgment and decree passed by the Tribunal.

7. The deceased was aged about 45 years at the time of the accident. Therefore, the correct multiplier to be adopted

was 13 and not 14. It is noticed that the gross income of the deceased was Rs.10,286.86 per month. It also consists of direct benefits, indirect benefits and welfare benefits. Considering the same, the Tribunal has taken only a sum of Rs.9,112/- as the net income for the purpose of determining the compensation. The aforesaid amount is not disputed. Hence, I am satisfied with the same.

8. Since the deceased had crossed the age of 45 years and was not 40 years at the time of accident, the future prospects can be considered only at 25% as per the decision of the Hon'ble Supreme Court in the case of National Insurance Co. Ltd. Vs. Pranay Sethi and Others reported in (2017) 16 SCC 680 and another decision reported in Magma General Insurance Company Ltd. vs. Nanuram @ Chuhru Ram and Others, (2018) 18 SCC 130 : 2018 Online SC 1546.

9. Therefore, for the purpose of determining the compensation 25% has to be added towards future prospects i.e. Rs.2278 (25% notional income of Rs.9,112/-).

10. Since the deceased would have to be liable to pay Income tax, there shall be a notional deduction of 5% from the total income of the deceased towards Income Tax. Since the deceased was supporting a fairly large family, the deduction towards personal expenses of the deceased shall be restricted to 25%.

11. The Tribunal has awarded only a sum of R.5,000/- towards loss of consortium, a sum of Rs.5,000/- towards loss of love and affection. The amounts awarded towards loss of love and affection are enhanced to Rs.30,000/- as Rs.10,000/- per person considering the date of accident. Therefore, there shall be no additional compensation towards loss of love and affection. The Tribunal has also awarded a sum of Rs.7,500/- towards loss of estate. It appears to be reasonable and is therefore confirmed. The Tribunal has awarded a sum of Rs.7,500/- towards loss of expectation of life. Since the amounts towards future prospects is awarded, I set aside the award to that extent.

12. In the light of the above discussion, the amount of compensation awarded by the Tribunal is re-quantified as follows:-

Heads and Calculation	Re-quantified Amount by this Court
Loss of dependency i) Income of the deceased Rs. 9,112 ii) Add 25%future prospects (9,112x25%) Rs. 2,278 -------------- Rs. 11,390 iii) Monthly contribution to the family after deducting 1/4th towards personal expenses of the deceased(Rs.11390x1/4) Rs. 2,847.50 -------------- Rs. 8,542.50 -------------- iv) Annual Contribution to the family (Rs.8542.50x12) Rs.1,02,510.00 v) Less 5% income tax (Rs.1,02,510x5%) Rs. 5,125.50 ----------------- Rs. 97,384.50 ----------------- v)Multiplier 13 (Rs.97,384.50x13) Rs.12,65,998.50	Rs.12,65,998.50
Loss of consortium to the 1st appellant	Rs. 30,000
Loss of parental consortium to the 2nd to 4th appellants (Rs.30,000 x 3)	Rs. 90,000
Loss of estate	Rs. 7,500
Funeral expenses	Rs. 5,000
Total	Rs.13,98,498.50 rounded off to Rs. 14,00,000/-

(30,000 x 3 = 90,000) as per the decision of the Hon'ble Supreme Court in Magma General Insurance Company Limited Vs.

Nanuram @ Chuhru Ram and Others, (2018) 18 SCC 130.

13. The enhanced amount of compensation of Rs.14,00,000/- is apportioned to the appellants as follows:-

Appellants	Loss of dependency (Rs.12,65,998.50)	Consortium / Love and Affection	Funeral Expenses	Loss of Estate	Total
1st appellant	Rs.6,65,998.50	Rs.30,000/-	Rs.5,000/-	Rs.7,500/-	Rs.7,08,498.50 rounded off to Rs. 7,10,000/-
2nd appellant	Rs.2,00,000	Rs.30,000/-			Rs. 2,30,000/-
3rd appellant	Rs.2,00,000	Rs.30,000/-	-		Rs. 2,30,000/-
4th appellant	Rs.2,00,000	Rs.30,000/-			Rs. 2,30,000/-

14. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.9,77,232/- is hereby enhanced to Rs.14,00,000/-. The 2nd respondent-Insurance Company is directed to deposit the aforesaid amount of compensation together with interest at the rate of 7.5% per annum from the date of the claim petition till the date of deposit and costs, less any amount already deposited by them, within a period of six weeks from the date of receipt of a copy of this judgment. The appellants are directed to pay enhanced court fee, on the enhanced amount of compensation in case of short fall.

15. On such deposit, the 1st to 3rd appellants are permitted to withdraw their respective shares with accrued interest as per apportionment fixed by the Tribunal, after adjusting the amount, if any, already withdrawn, by filing suitable applications before the Tribunal.

16. It is noted that the 4th appellant was aged about only 10 years at the time of the claim petition in the year 2001 and would have attained the age of majority as on date. Therefore, the 4th appellant is permitted to file appropriate application before the Tribunal for recording the age of majority to withdraw his share together with accrued interest as per apportionment fixed by the Tribunal, by filing suitable application before the Tribunal. No cost.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

jas/kkd

To

1. The Chief Judge,
   Motor Accident Claims Tribunal,
   Court of Small Causes, Chennai.

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

C.M.A.No.2093 of 2005

NMI(CO)
SU(22/11/2021)