IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.07.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.1482 of 2009

(Through Video Conferencing)

1.R.Prema

2.Hariharan. R

3.R.Jalaja

4.R.Jagan (minor)

(Minor rep. by mother & N.G the 1st appellant)
... Appellants/Petitioner

Vs.

1.D.Thilakkar

2.United India Insurance Co. Ltd.,
No.38, Anna Salai,
Chennai - 600 002. ... Respondents/Respondents

(1st respondent has remained ex-parte before the Trial Court)

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 09.06.2008 made in MACT.O.P.No.3381 of 2003, on the file of IV Small Causes Court (Motor Accident Claims Tribunal), Chennai.

For Appellants : Mr.R.Kalai Arasan

For R2 : Mr.D.Bhaskaran

R1 : Exparte

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the claimants, against the impugned Judgment and Decree dated 09.06.2008 passed by the Motor Accidents Claims Tribunal, Chennai, in M.C.O.P.No.3381 of 2003.

2. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.3,44,900/- together with interest at 7.5% per annum from the date of claim petition till the date of deposit with proportionate costs, to the appellants/claimants.

3. The appellants/claimants are the legal heirs and dependents of the deceased P.Rajagopal, who died in a motor accident that took place on 16.06.2003 at about 21.15 hours, while he was riding a motorcycle bearing registration No.TN-09-M-1352 from Mugappaiar to Velacherry. It was alleged that a Pick-Up Van bearing registration No. TN-07-V-5134 insured with the 2nd respondent came from the opposite direction driven by its driver in a rash and negligent manner and hit the deceased, as a result of which, he suffered grievous injuries and later died in the hospital. Therefore, the appellants/claimants as legal representatives of the deceased filed a claim petition for compensation. After considering the evidence on record, the Tribunal has awarded the aforesaid compensation to them. Aggrieved by the same, this Civil Miscellaneous Appeal was filed by the claimants.

4. The case of the appellants/claimants is that the compensation of Rs.2,59,896/- towards loss of pecuniary benefits was based on a notional income of Rs.2,500/- per month of the deceased though the appellants/claimants claimed the income of the deceased between Rs.10,000/- and Rs.15,000 per month in the claim petition. It is submitted that the Tribunal ought to have taken the notional income of the deceased as Rs.6,500/- in absence of proof as per the decision of the Hon'ble Supreme Court in Syed Sadiq Vs. United India Insurance Co.Ltd., (2014) 2 SCC 735.

5. The learned counsel for the 2nd respondent submits that the impugned Judgment and Decree passed by the Tribunal is well reasoned and requires no interference.

6. I have considered the arguments advanced by the learned counsel for the appellants and the 2nd respondent. I have perused the evidence on record and the impugned Judgment and Decree passed by the Tribunal.

7. The notional income of Rs.2,500/- per month of the deceased appears to be too low. Considering the fact that the appellants/claimants have claimed the income of the deceased as Rs.10,000/- to Rs.15,000/- per month in the claim petition but have not produced any evidence to substantiate the income of the deceased, the notional income of the deceased is fixed as Rs.4,500/- per month. Therefore, the compensation awarded by the Tribunal under the head of loss of pecuniary is modified as follows:-

i. Income of the deceased is fixed by this Court as a sum of Rs.4,500/- p.m.

ii. Future prospectus is added by this Court at 25% as per the decision of the Hon'ble Supreme Court in National Insurance Company Limited Vs. Pranay Sethi and Others, (2017) 16 SCC 680.

iii. Person Expenses of the deceased is considered as $1/4^{th}$ instead of $1/3^{rd}$ fixed by the Tribunal.

($4,500 + 25\% - 1/4^{th} \times 12 \times 13 = 6,58,125$) - Rs.6,58,125/-

8. Therefore, in the compensation awarded by the Tribunal towards loss of pecuniary benefits is enhanced to Rs.6,58,125/- from Rs.2,59,896/-. As far as the other conventional heads are concerned, they are slightly modified. Thus, the compensation payable by the 2nd respondent Insurance Company is re-quantified as follows:-

Heads	Amount
Loss of Pecuniary benefits	Rs.6,58,125/-
Funeral Expenses	Rs. 5,000/-
Loss of consortium for A1*	Rs. 40,000/-
Loss of filial consortium for A2 to A4 (40,000x3)	Rs. 1,20,000/-
Total	Rs.8,23,125/-

The re-quantified amount of compensation of Rs.8,23,125/- is rounded off to Rs.8,25,000/-.

* As per the decision in Magma General Insurance Company Limited Vs. Nanuram @ Chuhru Ram and Others, (2018) 18 SCC 130.

9. Therefore, the 2nd respondent Insurance Company is directed to deposit the enhanced amount of compensation of Rs.4,80,100/- (8,25,000 - 3,44,900), together with interest at 7.5 % per annum from the date of filing of the claim petition till the date of deposit, within a period of six weeks from the date of receipt of a copy of this Judgment.

10. The 2nd respondent Insurance Company is also directed to deposit the compensation awarded by the Tribunal, if the same has not been deposited, together with interest and proportionate costs as directed by the Tribunal, less the amount already deposited if any, within the aforesaid period.

11. The appellants/claimants are entitled to equal share in the compensation awarded by the Tribunal. On the amount of enhanced compensation of Rs.4,80,100/-, the 1st appellant/1st claimant is entitled to a sum of Rs.2,40,100/- together with interest at 7.5% p.a. The balance amount of enhanced compensation, i.e. Rs.2,40,000/-, is to be divided equally to the 2nd to 4th appellants/2nd to 4th claimants together with interest at 7.5% p.a.

12. On such deposits, the 1st to 3rd appellants / 1st to 3rd claimants are permitted to withdraw their respective share together with interest, by filing suitable application before the Tribunal, less the amount already withdrawn if any.

13. Since the 4th appellant/4th claimant is still a minor, his share shall be deposited in any one of the Nationalised Bank under reinvestment scheme till he attains majority.The 1st appellant/1st claimant, who is the guardian of the minor, is permitted to withdraw the accrued interest from the minor's deposit once in three months directly from the said Bank. On attaining majority, 1st appellant/1st claimant may be permitted to withdraw his share, by filing suitable application before the Tribunal.

14. This Civil Miscellaneous Appeal stands partly allowed. No cost.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To:

The Motor Accidents Claims Tribunal,
(IV Small Causes Court, Chennai),
Chennai.

Copy to

The Section Officer,
VR Section, High Court, Madras-104.

ad[co]
srg 29/12/2020