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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.12.2020

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.1838 of 2015

1.Thoppuli
2.Chandra
3.Mappali
4.Patchammal

....Appellants

Vs

1.A.Arulanand
(Since R1 remained exparte before the Tribunal, his
presence may be dispensed with)

2.Bharathi Axa General Insurance Co. Ltd.,
No.221/62,
Anna Salai,
Chennai-2.

...Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 23.07.2014 made in M.A.C.T.O.P.No.3905 of 2012 on the file of the Motor Accidents Claims Tribunal, III Judge Small Causes Court, Chennai.

For Appellant : Mrs.A. Subadra
sor M/s.M.Malar

For Respondents : R1 exparte
Mr.S.Arunkumar for R2

J U D G M E N T

(This case has been heard through Video Conferencing)

Heard the learned counsel for the appellant and the learned counsel for the second respondent Insurance Company.

2.The appeal is filed for enhancement of compensation by the legal representatives of the deceased.



3. On 05.07.2012, while the deceased was sleeping in his hut, JCB bearing Registration No.TN-20-BQ-9101 rash and negligently entered into the hut and hit the deceased. As a result, the deceased sustained grievous injuries over the body and died on the spot. At the time of his death, he was earning his livelihood as a Mason. He had two wives and parents to take care. Claiming that the deceased was 48 years at the time of accident and earning Rs.9000/- per month, his dependents filed claim petition seeking a sum of Rs.10,00,000/- as compensation.

4. The said claim was resisted by the Insurance Company on the ground that the driver of the JCB had no valid and effective driving license with requisite endorsement.

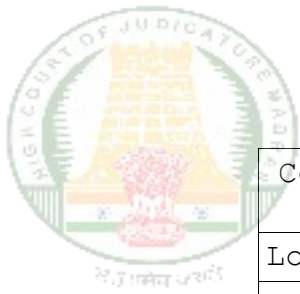
5. Before the Tribunal, Chandra, the second claimant and one Parasuraman were examined as witnesses to prove the negligence and entitlement of the claimant. Six exhibits were marked particularly, the Ration Card of the deceased which disclose the fact that the deceased had two wives and living with them. Taking note of this fact, the Tribunal has awarded a sum of Rs.8,47,000/- as compensation by fixing notional income of the deceased at Rs.6,000/-.

6. Learned counsel for the appellant would submit that in the year 2012, normally for a skilled person, notional income was fixed more than Rs.8,000/- and therefore, the award has to be enhanced accordingly and also the guidelines given by the Constitution Bench of this Court in Pranay Sethy's case should be applied by adding 25% towards future prospects.

7. Learned counsel appearing for the respondent Insurance Company would state that the deceased was not really a skilled person but only assisting the Mason and even for that, there is no evidence. Therefore, the Tribunal has rightly fixed Rs.6,000/- as monthly income and instead of deducting 1/3, it has deducted only 1/4th from his total income for personal expenditure.

8. On taking note of the rival contentions and records, this Court finds that the award of the Tribunal requires modification and increase on two heads. The notional income should be fixed at Rs.6,500/- instead of Rs.6,000/- and an additional sum of Rs.1,625/- to be added towards future prospects. Accordingly, the award is refixed as below:

Compensation under Various Heads	Award passed by this Court
Loss of income (8125X13X12X3/4)	Rs.9,50,625/-



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Compensation under Various Heads	Award passed by this Court
Loss of Estate	Rs. 15,000/-
Funeral Expenses	Rs. 15,000/-
Loss of Consortium	Rs. 40,000/-
Loss of love and affection	Rs. 40,000/-
Total	Rs.10,60,625/-

9. Accordingly, the award amount shall be deposited by the respondent Insurance Company along with interest at the rate of 7.5% interest per annum from the date of numbering the petition (31.08.2012) till the date of realization, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the claimants shall apportion the award amount with proportionate interest equally. The claimants are permitted to withdraw the money on appropriate application.

10. In the result, the Civil Miscellaneous Appeal is allowed. No costs.

Sd/-
Assistant Registrar(CS-I)

//True Copy//

Sub Assistant Registrar

vri

To

1.Motor Accidents Claims Tribunal,
III Small Causes Court,
Chennai.

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

+1cc to Mr.S.Arun Kumar, Advocate, S.R.No.38937
+1cc to M/s.M.Malar, Advocate, S.R.No.38899

CMA No.1838 of 2015

RR(CO)
CB(17/08/2021)