IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.No.947 of 2020

1.Tamil Selvan
S/o.Rasiannan

2.Shanthini
W/o.Dakshinamoorthy

3.Dakshinamoorthy
S/o.Kumarasundaram ... Appellants/Petitioners

Vs.

1.Chetan Kumar

2.The Oriental Insurance Co. Ltd.,
R.O. Legal Department,
No.115, Prakasam Salai,
Broadway, Chennai - 600108. ... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the order and decree dated 28.01.2019 in M.A.C.O.P.No.1198 of 2016 on the file of Motor Accident Claims Tribunal, Special Sub Court I, Small Causes Court, Chennai.

For Appellants :Mr.Kishore for
Ms.Ramya V.Rao
For Respondents :R-1 set ex-parte before the Tribunal
Mr.E.Chandrasekaran for R-2

JUDGMENT

(The Judgment of the Court was delivered by R.Subbiah, J)

The appeal is heard through Video Conferencing.

2. Not being satisfied with the quantum of compensation awarded by the Tribunal in and by its order dated 28.01.2019 passed in M.A.C.O.P.No.1198 of 2016 on the file of Motor Accident Claims Tribunal, Special Sub Court I, Small Causes Court, Chennai, the claimants have filed the present appeal.

3. The brief facts of the case are as follows:

The appellants/claimants are husband and parents of the deceased Elackiya. On 13.11.2015 at about 00.45 hours, while the deceased was travelling in a Car bearing Registraion No.TN-22-AZ-8562 along with her husband on the Bangalore National Highways near Dharka Signal, Hosur, the driver of another vehicle viz., Tata Ace Van bearing Registration No.KA-14-B-2411, which was proceeding in front of the car of the deceased, without giving any signal, suddenly applied the brake, as a result of which, the car of the deceased hit the rear side of the Van and thus, involved in the accident. In the said accident, the said Elackiya, her husband and the driver sustained grievous injuries. Immediately, the said Elackiya was admitted at Sparsh Hospital, Bangalore. Despite treatment, she died on 14.11.2015. The first respondent is the owner of the Van and the second respondent is the insurer thereof. Thus, the appellants/claimants filed a claim petition seeking compensation in a sum of Rs.1,00,00,000/-.

4. The second respondent/Insurance Company has filed a detailed counter statement, resisting the claim made by appellants/claimants. The second respondent-Insurance Company, not only denied the rash and negligent driving on the part of the driver of the van, but they have also denied the income of the deceased.

5. To prove the claim, on the side of appellants/claimants, the husband of the deceased, driver of the Car and mother of deceased were examined as PWs.1, 2 and 3 and one K.L.Sekar was examined as PW-4 and thirty documents were marked. On the side of second respondent-Insurance Company, the official of the insurance company was examined as RW-1 and two Private Investigators were examined as RWs.2 and 3 and three documents were marked on their side.

6. On an appreciation of the materials available on record, the Tribunal found that the accident had occurred due to the rash and negligent driving of the van and held that the second respondent is liable to pay compensation, indemnifying the first respondent. The Tribunal awarded total compensation in a sum of Rs.10,37,000/-. The break-up details of the compensation awarded by the Tribunal are as follows:

Sl. No.	Head under which the Compensation is awarded by the Tribunal	Amount (in Rs.)
1.	Loss of dependency	9,52,000/-
2.	Loss of love and affection	50,000/-

Sl. No.	Head under which the Compensation is awarded by the Tribunal	Amount (in Rs.)
3.	Loss of Estate	15,000/-
4.	Funeral expenses	15,000/-
5.	Transport charges	5,000/-
	Total	10,37,000/-

The said sum was directed to be paid together with interest at 7.5% p.a. from the date of filing the claim petition till the date of realisation. The present appeal has been filed by the claimants seeking enhancement of compensation.

7. Learned counsel for appellants/claimants submitted that it was the case of appellants/claimants before the Tribunal that the deceased was an Advocate and she was earning a sum of Rs.25,000/- to Rs.50,000/- p.m. The deceased was also an MBA Graduate. In proof thereof, Ex.P7 – Copy of the provisional certificate of enrolment of the deceased as Advocate and Ex.P8 – temporary ID card of the deceased for Advocate, were marked. However, the Tribunal has fixed only a sum of Rs.10,000/- as the monthly income of the deceased and by adding 40% towards future prospects, arrived at a sum of Rs.14,000/- and thus the Tribunal fixed the annual income of the deceased at Rs.1,68,000/- (Rs.14,000 x 12). As the number of dependents are 3, the Tribunal has deducted 1/3 towards personal expenses of the deceased and arrived at a sum of Rs.1,12,000/- (1,68,000 - 1/3 of 1,68,000) as the annual loss of income. Further, the Tribunal, after deducting the said 1/3 amount, again deducted 50% of the income from the said Rs.1,12,000/- and fixed a sum of Rs.56,000/- as the actual loss of income, on the reasoning that the husband of the deceaed got re-married and moreover, there was no evidence to show that the parents of the deceaed were depending upon the income of the deceased. Hence, now, it is the submission of the learned counsel appearing for the appellants/claimants that the Tribunal, after deducting 1/3 towards personal expenses, again ought not to have deducted another 50% and therefore, the deduction of the said 50%, amounts to double deduction towards personal expenses. Therefore, the learned counsel apppearing for the appellants/claimants prays this Court to set aside the deduction of 50% made by the Tribunal and to enhance the compensation amount awarded by the Tribunal by fixing a sum of Rs.20,000/- as the monthly income of the deceased by way of re-calculation.

8. Countering the above submissions, though the learned counsel appearing for second respondent-Insurance Company had admitted that the double deduction made by the Tribunal is not

correct, but opposes to fix a sum of Rs.20,000/- as the monthly income of the deceased and stated that no proof was produced by the claimants to show that the deceased was earning a sum of Rs.20,000/-, and prayed for dismissal of the appeal.

9. This Court has considered the rival submissions made on either side. Since only the quantum of compensation is challenged, this Court is not dealing with the other aspects of the award.

10. Considering the fact that the accident took place in the year 2015 and also taking into consideration the cost of living prevailing at the relevant point of time, as also the fact that the deceased was an Advocate, this Court is of the view that it would be appropriate to fix a sum of Rs.15,000/- as the monthly income of the deceased to arrive at a just and proper compensation under the head loss of dependency. Accordingly, the monthly income of the deceased is fixed at Rs.15,000/-. As the deceased was aged 27 at the time of accident, 40% has to be added towards future prospects and if it is so added, the monthly income works out to Rs.21,000/- (15,000+6,000). As rightly submitted by learned counsel for appellants/claimants, the Tribunal went wrong in adopting double deduction towards personal expenses and hence, the deduction made by the Tribunal is set aside. This Court, in the present case, considers it appropriate to deduct 1/2 towards personal expenses and if it is so deducted, the total monthly income works out to Rs.10,500/- (21,000 - 10,500). The annual income would be Rs.1,26,000/- (10,500*12). The multiplier to be applied in this case is '17' and if it is so applied, the loss of dependency works out to Rs.21,42,000/- (1,26,000 * 17).

11. Further, this Court finds that the sum of Rs.50,000/- awarded towards loss of love and affection is on the lower side and hence, the same is enhanced to Rs.80,000/- i.e. Rs.40,000/- each to the parents of the deceased. Likewise, the amount of Rs.15,000/- and Rs.5,000/- awarded under the heads 'funeral expenses' and 'transport' are on the lower side and hence, the same is enhanced to Rs.25,000/- and Rs.20,000/- under the respective heads. The amount of Rs.15,000/- awarded by the Tribunal under the head "loss of estate" is hereby confirmed, the same being just and proper.

12. Accordingly, the modified compensation payable under the various heads are tabulated below :

Sl. No.	Compensation awarded under the head	Amount awarded by the Tribunal	Amount awarded by this Court
		(in Rs.)	
1.	Loss of dependency	9,52,000/-	21,42,000/-
2.	Loss of love and affection	50,000/-	80,000/-
3.	Funeral expenses	15,000/-	25,000/-
4.	Loss of Estate	15,000/-	15,000/-
5.	Transport charges	5,000/-	20,000/-
	Total	10,37,000/-	22,82,000/-

13. In the result, the Civil Miscellaneous Appeal is partly allowed. The compensation of Rs.10,37,000/- awarded by the Tribunal is hereby enhanced to Rs.22,82,000/- [Rupees Twenty Two Lakhs and Eighty Two Thousand only], which shall carry 7.5% interest from the date of claim petition till the date of deposit. Since the first appellant/husband of the deceased got re-married, he is entitled to a sum of Rs.5,00,000/- and the appellants 2 and 3/parents of deceased, each, are entitled to sum of Rs.8,91,000/-. The second respondent/Insurance Company is directed to deposit the enhanced compensation of Rs.22,82,000/- together with interest at 7.5% p.a. from the date of petition till the date of deposit (after deducting the amount already deposited), within a period of six weeks from the date of receipt of this judgment. On such deposit, the appellants/claimants are entitled to withdraw their respective shares on due application, after deducting the amount, if any already withdrawn by them. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

gm/cs

To
1. The Special Subordinate Judge I
The Motor Accident Claims Tribunal,
Special Sub Court I,
Small Causes Court,

Chennai.

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

+1 CC to Mr.E.Chandrasekaran, Advocate sr 31824
+1 CC to Mr.A.N. Viswanatha Rao, Advocate sr 31818.

C.M.A.No.947 of 2020

RP(CO)
SP(22/10/2020)