IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.12.2020

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THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.1929 of 2013

(Through Video Conferencing)

1.Subramani

2.Amudha ... Appellants/Claimants

Vs.

1.S.Raja

2.The Manager,
Reliance General Insurance Company Limited,
No.73, 1st Floor, Officers' Line Road,
Vellore - 632 001. ... Respondents/Respondents

(1st respondent was exparte before the Tribunal)

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 08.01.2010 and made in M.C.O.P.No.426 of 2008 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Vellore.

For Appellants : Mr.M.Sivakumar

For 2nd Respondent : Mr.S.Arunkumar

J U D G M E N T

The claimants are the appellants in this Civil Miscellaneous Appeal. They are aggrieved by the impugned Judgment and Decree dated 08.01.2010 passed by the Motor Accidents Claims Tribunal cum Chief Judicial Magistrate Court, Vellore in M.C.O.P.No.426 of 2008.

2. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.90,000/- as compensation together with interest at 7.5% per annum from the date of filing of the claim petition till the date of deposit, to the appellants/claimants as against a claim amount of Rs.20,00,000/-. The appellants are the son and the daughter of the deceased Rukkammal.

3. The brief facts of the case are that on 06.05.2008 at about 07.15 p.m, while the deceased Rukkammal was crossing the National Highways Road at Sathuvachari, R.T.O. Office Junction, a lorry bearing registration number TMN-7781 driven by its driver in a rash and negligent manner hit the deceased, as a result of which, the deceased sustained grievous injuries and died. Therefore, as the dependents of the deceased Rukkammal, the appellants filed a claim petition for compensation before the Tribunal. After considering the evidence on record, the Tribunal has awarded the aforesaid compensation of Rs.90,000/-. Aggrieved by the same, they have filed this appeal seeking enhancement of compensation.

4. The learned counsel for the appellants submits that the Tribunal erred in awarding a meager sum of Rs.90,000/- as compensation by considering the notional income of the deceased as Rs.15,000/- per annum as against the income of Rs.6,000/- per month claimed in the claim petition. The learned counsel for the appellants further submits that the Tribunal has wrongly taken the age of the deceased at the time of the accident as 57 years instead of 45 years.

5. The learned counsel for the 2nd respondent Insurance Company submits that the impugned Judgment and Decree was well reasoned and requires no interference.

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

7. The appellants who were the claimants before the Tribunal are the son and the daughter of the deceased Rukkammal. The appellants themselves were aged about 35 and 28 years respectively at the time of filing of the claim petition. They cannot be considered as dependents of the deceased Rukkammal. They have declared the age of the deceased as 45 years at the time of the accident which is highly improbable. The Tribunal while disposing the claim petition has considered the age of the deceased as 57 years based on the postmortem report and arrived at the aforesaid compensation of Rs.90,000/-.

8. The annual income of the deceased of Rs.15,000/- is very low. The Hon'ble Supreme Count in Syed Sadiq Vs. United India Insurance Co.Ltd., (2014) 2 SCC 735 has considered a

notional income of a vegetable vendor as Rs.6,500/- for an accident which took place in the year 2008. In the present case, the accident took place on 06.05.2008. The deceased was purportedly doing Plastic Business. The appellants/claimants have also stated before the Tribunal that the monthly income of the deceased was Rs.6,000/-. There is no proof to substantiate the same. At the same time, I am inclined to consider the monthly income of the deceased as Rs.3,500/- for computing the compensation considering the fact that the accident is of the year 2008.

9. As far as the age of the deceased is concerned, there is some element of doubt. The appellants/claimants claimed that the deceased was aged about 45 years at the time of the accident. This was rightly rejected by the Tribunal as the first appellant/1st claimant was aged about 35 years at the time of filing of the claim petition. It is highly improbable that the age of the deceased would have been 10 years when the 1st appellant/1st claimant was born. In absence of direct evidence to substantiate that the deceased was aged about 57 years or 45 years as per the claim statement before the Tribunal, I am inclined to consider the age of the deceased as 55 years for the purpose of re-computing the compensation. This would satisfy the legal requirement that the deceased was aged 18 years at the time of the marriage.

10. Since the deceased was supporting a small family consisting two adults, I am inclined to deduct 50% of the notional income towards personal expenses of the deceased as per the decision of the Hon'ble Supreme Court in New India Assurance Company Limited Vs. Vinish Jain and Others, (2018) 3 SCC 619. As per the decision of the Hon'ble Supreme Court in National Insurance Company Limited Vs. Pranay Sethi and Others, (2017) 16 SCC 680, the appellants/claimants are also entitled to the compensation on account of future prospects at 10% of the notional income of the deceased.

11. Since the appellants were already adults at the time of the accident, there is no question of granting parental consortium. At the same time, they are entitled to some amount towards loss of love and affection. Similarly, the Tribunal has not awarded any amounts towards transportation and therefore, a sum of Rs.5,000/- is awarded under the head of transportation.

12. Therefore, the compensation of Rs.90,000/- awarded by the Tribunal is re-quantified as follows:-

Heads and Calculation	Amount
Loss of dependency : - Monthly Income : Rs.3,500/- Add: Future Prospects at 10 % (6,000 x 10/100) : Rs. 350/- --------------- : Rs.3,850/- Less: Personal Expenses 1/2nd (3,850 x 1/2) : Rs.1,925/- --------------- : Rs.1,925/- Annual Contribution to the family (1,925 x 12) : Rs.23,100/- Multiplier 11 (23,100 x 11) : Rs.2,54,100/-	Rs.2,54,100/-
Loss of love and affection (15,000 x 2)	Rs. 30,000/-
Funeral Expenses	Rs. 10,000/-
Transportation	Rs. 5,000/-
Total	Rs.2,99,100/- Rounded off to Rs.3,00,000/-

Thus, the compensation of Rs.90,000/- awarded by the Tribunal is enhanced to Rs.3,00,000/-.

13. It is made clear that since this appeal has been filed with delay of 756 days, there shall be no interest for the aforesaid period of delay as per the order dated 20.02.2013 passed by this Court in M.P.No.1 of 2012 in C.M.A.Sr.No.50229 of 2012 while condoning the delay in filing this appeal.

14. The 2nd respondent Insurance Company is directed to deposit the aforesaid compensation of Rs.3,00,000/- together with interest at 7.5% per annum from the date of filing of the claim petition till the date of deposit except for the period of delay and costs awarded by the Tribunal, less any amount already deposited, within a period of six weeks from the date

of receipt of a copy of this Judgment.

15. On such deposit, the appellants are permitted to withdraw the compensation together with interest and costs equally, less any amount already withdrawn, by filing suitable applications before the Tribunal.

16. Accordingly, this Civil Miscellaneous Appeal is partly allowed. No cost.

Sd/-
Assistant Registrar(CS-II)

//True copy//

Sub Assistant Registrar

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To

The Motor Accident Claims Tribunal,
The Chief Judicial Magistrate,
Vellore.

Copy To

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

+1cc to Mr.S.Arun Kumar, Advocate SR.No.40160

+1cc to Mr.C.Prabakaran, Advocate SR.No.40145

C.M.A.No.1929 of 2013

LN(CO)
GMY(05/05/2021)