

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.1960 of 2013

1. Mrs.Durmati
2. Mr.Basanta Bahadur
3. Goumati Kumari
4. Saran Bahadur
5. Hemanta Kumar
6. Mukti Bahadur
7. Bhumi Devi

... Appellants/Petitioners

(Appellants 3 to 6 are minor and represented
by their mother and natural guardian 1st Appellant)

Vs.

1. Mr.K.Kannappan
2. Royal Sundaram Alliance Insurance Company Limited,
Sundaram Towers,
45 & 46, Whites road,
Chennai - 600 014.

... Respondents/Respondents

(R1 remained exparte before the Tribunal)

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree dated 12.12.2012 made in M.A.C.T.O.P.No.2450 of 2010 on the file of the Motor Accident Claims Tribunal, XVIII Additional Judge, Chennai.

For Appellants : Mr.F.Terry Chellaraja

For R2 : Mr.E.Rajadurai
For Mr.M.B.Raghavan
R1 - Exparte

Judgment

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 12.12.2012 made in M.A.C.T.O.P.No.2450 of 2010 on the file of the Motor Accident Claims Tribunal, XVIII Additional Judge, Chennai.

2. The brief facts of the case is that on 19.09.2006 at about 9.45 a.m., one Bakta Bahadur was riding his bicycle at G.S.T.Road, Urappakkam, opposite to Karana Junction Road. At that time, the first respondent's lorry bearing Registration No.TN-21-M-9399 driven by its driver in a rash and negligent manner dashed against the bicycle of Bakta Bahadur. As a result, the Bakta Bahadur had sustained grievous injuries and died on the same day. At the time of accident, he was aged 45, and before the accident, he was a Security Guard in A.L.P.Company, Urappakkam, Kancheepuram District and was earning Rs.6,000/- per month. Since he died in the accident, his legal heirs who are the appellants herein filed a petition before the Motor Accident Claims Tribunal, XVIII Additional Judge, Chennai, claiming Rs.10,00,000/- as compensation under various heads.

3. Denying the allegations, the second respondent who is the insurer of the first respondent's lorry filed a counter affidavit before the Tribunal stating that the accident was occurred only due to the rash and negligent driving of the deceased. Hence they are not liable to pay any compensation to the appellants. Further, it has been stated that the driver of the first respondent had no valid driving licence at the time of accident. Hence they cannot be held liable for the claim. Moreover, it has been stated that the alleged age, occupation and income of the deceased are not true and the amount of compensation claimed is highly excessive.

4. During the trial, on the side of the appellants, the first appellant was examined as PW1, one Ganesh Bahadur was examined as PW2 and Exs.P1 to P4 were marked. On the side of the respondents, neither any witness was examined nor any document was marked.

5. The Motor Accident Claims Tribunal, XVIII Additional Judge, Chennai, after considering the pleadings, oral and documentary evidence, allowed the petition in favour of the claimants and awarded Rs.6,69,000/- as compensation as follows :

S.No.	Description	Amount
1.	Loss of Income	3,51,000
2.	Future Prospectus	2,00,000
3.	Loss of Love and Affection	1,00,000
4.	Funeral Expenses	5,000
5.	Transport	3,000

S.No.	Description	Amount
6.	Loss of Consortium	10,000
	Total	6,69,000

6. Aggrieved by the award, the appellants/claimants have filed this appeal before this Court stating that the Tribunal has erred in fixing the compensation at Rs.6,69,000/-.

7. Heard the learned counsel for the appellants and the learned counsel for the second respondent, and perused the materials available on record.

8. On perusal of the award dated 12.12.2012 passed by the Motor Accident Claims Tribunal, XVIII Additional Judge, Chennai, it is observed that the appellants have not marked any document to prove the income of the deceased, therefore, the Tribunal has fixed the income at Rs.3,000/- per month. As per the case reported in 2009 ACJ 1298 [Sarla Verma and others vs Delhi Transport Corporation and another], if the number of dependent in the family exceeds 6, 1/5th of the income should be deducted for personal expenses of the deceased. In this case, the number of dependents are 7. But the Tribunal has wrongly deducted 1/4th instead of deducting 1/5th and this Court is inclined to modify the same. As per the above citation, the multiplier for a person aged 45 is 14. But the Tribunal has wrongly applied 13 multiplier instead of applying 14 and awarded Rs.3,51,000/- (3000 - 1/4 x 12 x 13) towards Loss of Income and this Court is inclined to modify the same.

9. It is also observed that the sum awarded under the heads of Funeral Expenses and Loss of Consortium is found to be meager, therefore, this Court is inclined to enhance it as Rs.10,000/- for Funeral Expenses and Rs.25,000/- for Loss of Consortium. The sum awarded under the other three heads i.e. Rs.3,000/- for Transport, Rs.1,00,000/- for Loss of Love and Affection and Rs.2,00,000/- for Future Prospectus, is reasonably awarded by the Tribunal. Hence, they need not be interfered with.

10. In view of the observations made by this Court, the compensation awarded by the Tribunal is modified as follows :

Income	-	3,000
Deductions of 1/5 for personal expenses of the deceased (3000 ? 600)	-	2,400
Loss of Income (2400 x 12 x 14)	-	4,03,200
Future Prospectus	-	2,00,000
Loss of Love & Affection	-	1,00,000
Funeral Expenses	-	10,000
Transport	-	3,000

Loss of Consortium	-	25,000
Total Compensation		<u>7,41,200</u>

11. Accordingly, this Civil Miscellaneous Appeal is partly allowed and the respondents are directed to deposit the said amount of Rs.7,41,200/- jointly or severally with interest at the rate of 7.5% per annum from the date of petition till the date of realization, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this Judgment. After the entire amount has been deposited by the respondents, the appellants 1 to 3 and 7 / claimants shall withdraw their respective shares as per the apportionment made by the Tribunal by filing a formal petition before the Tribunal, less the amount if any, already withdrawn. The award amount of the minor appellants 4 to 6 / claimants shall be deposited in a fixed deposit in any one of the nationalized banks till they attain majority. As a natural guardian of the appellants 4 to 6, the first appellant is entitled to receive the accrued interest once in every six months directly from the bank for the maintenance of the minor children. No costs.

Sd/-

Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accident Claims Tribunal,
XVIII Additional Judge, Chennai.

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

+1cc to Mr.N.Vijayaraghavan, Advocate SR.18316
+1cc to M/s.F.Terry Chella Raja, Advocate SR.18102

C.M.A.No.1960 of 2013

RLD(CO)
CB(17/03/2021)