IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2020

CORAM :

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2271 of 2012

1. D.Banumathi

2. D.Bhuvaneswari

3. D.Karthick (minor)
rep by his mother D.Banumathi/
first appellant ... Appellant/Claimant

Vs.

1.R.Suresh Kumar (remained exparte)
2.The New India Assurance Co., Ltd.,
No.2, B.R.Complex,
Woods Road, Anna Salai,
Chennai -2. ... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree made in MCOP.No.4501 of 2007 dated 07.02.2012 on the file of the Motor Accident Claims Tribunal, Chief Judge, Court of Small Causes, Chennai.

For Appellants : M/s.N.M.Muthurajan
For Respondents : R1 – Set exparte.
Mr.Krishnamoorthy, for R2.

J U D G M E N T

The appellant is the claimant filed this appeal for enhancement of compensation, as against the judgment and decree made in MCOP.No.4501 of 2007 dated 07.02.2012 on the file of the Motor Accident Claims Tribunal, Chief Judge, Court of Small Causes, Chennai.

2. On 21.09.2007 at 19.40hrs the deceased R.Durai Kannan was riding the cycle near Nerkundram Pathai, Vadapalani from south to north direction, van bearing Reg.No.TN10-D-8002 which was driven in a rash and negligent manner came behind and dashed against the cycle, due to which, the deceased sustained head injury and died on the spot. At the time of accident, the deceased was 53years, working as a mechanic and earning a sum of

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Rs.8,000/-p.m. The first respondent is the owner of the van and the second respondent is the insurer of the van are jointly and severally liable to pay the compensation to the claimants who are the legal heirs and dependants of the deceased Durai Kannan.

3. The second respondent/insurance company filed the Counter inter alia stating that the deceased is responsible for the accident and violated the rules of the road and negligently riding the cycle contributed and responsible for the accident and there is no negligence or rash driving on the part of the van driver and the insurer is not liable to pay any compensation.

4. In order to prove the case of the claimant, PW1 to PW3 were examined and marked Ex.P1 to Ex.P12. No oral and documentary evidence has been marked on the side of the respondents.

5. Heard the rival submissions made on both sides and perused the materials available on record.

6. The learned counsel for the appellant submits that the deceased was working as a mechanic and earning a sum of Rs.8,000/-p.m, the Tribunal fixed monthly income as Rs.6,000/- and after deducting 1/3rd of the amount towards personal expenses and applied the multiplier 9. The learned counsel submits that the tribunal ought not to have reduced the income from Rs.8,000 to Rs.6,000 for calculating the pecuniary benefits. The learned counsel for prays to enhance the award amount under the heads of consortium to the first appellant and for love and affection to the appellants 2 and 3. The deceased appellant is the only breadwinner of the family and prays this Court for enhancing the compensation.

7. The learned counsel for the first respondent submits that the Tribunal has rightly considered the entire facts and the nature of injuries sustained by the claimant and awarded fair compensation which is on higher side.

8. From the available records, it is seen that the tribunal has rightly considered the case of the claimant and awarded meager compensation. This Court is not inclined to increase the monthly income of the deceased as fixed by the Tribunal, however, this Court inclined to adopt the multiplier 11 for calculating the pecuniary benefits of the deceased Rs.4000x12x11 = Rs.5,28,000/-.

9. This Court however considering the material factors relevant for determination of just and fair compensation is inclined to enhance the compensation as stated below, the enhanced compensation are as follows :-

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Sl.No.	Heads	Amount
1	Loss of income/pecuniary benefits	5,28,000
2	Damages to cloth	1,000
3	Funeral expenses	10,000
4	Consortium to first appellant	40,000
5	Love and affection (all the appellants)	40,000
	Total	6,19,000

10. The compensation of Rs.4,82,000/- is enhanced to Rs.6,19,000/-. The same is payable with interest at 7.5% per annum from the date of petition till the date of payment and with proportionate cost. The time for payment of amount is eight weeks from the date of receipt of copy of the Judgment and on such deposit of amount, the claimant is permitted to withdraw the entire amount by filing separate cheque application. Out of the total award amount, the first appellant is entitled to Rs.2,19,000/- and the appellants 2 and 3 are entitled to Rs.2,00,000/-each. The judgment of the trial Court remains unaltered in other respects.

11. In the result, the Civil Miscellaneous appeal is partly allowed. No costs.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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To
1.The Chief Judge,
The Motor Accident Claims Tribunal,
Court of Small Causes, Chennai.

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

+1cc to Mr.R.Neethi Perumal, Advocate, S.R.No. 5609
+1cc to Mr.N.M.Muthurajan, Advocate, S.R.No. 6333

C.M.A.No.2271 of 2012

GP(CO)
GN(16/04/2021)

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