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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.2544 of 2015

1.P.Balakrishnan (Died)
2.Kowsalya
3.Saradamani
4.Vashitha.B (Minor)
5.Deepak.B (Minor)
(Appellants 4 and 5 minors represented by mother
and guardian Kowsalya.K)
(Appellants 2 to 5 brought on record as L.Rs. of the
deceased sole appellant vide order of court dated 8.10.2020
made in CMP No.11179 of 2020 in CMA 2544 of 2015
by Dr.GJJ)

....Appellants/L.R. Of the Petitioner

Vs

1.K.Venkatesan
2.A.S.Jayakumar
3.National Insurance Company Limited,
Karthikeya Complex,
First Floor,
403-B-10, Mettur Main Road,
Bhavani,
Erode District.

...Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 15.02.2013 made in M.C.O.P.No.295 of 2010 on the file of the Motor Accidents Claims Tribunal, Subordinate Judge, Bhavani.

For Appellant : Mr.Manogar
for Mr.P.Chandrasekar

For Respondents : R1 exparte
No Appearance for R2
Mr.J.Chandran for R3



J U D G M E N T

(This case has been heard through Video Conferencing)

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Heard the learned counsel for the appellant.

2. The appeal filed by the accident victim, who has lost his left leg amputated 1/3 above the thigh level due to the crushing of wheels by the offending bus bearing Registration No. TN38-V-0721 insured with the third respondent Insurance Company.

3. The accident occurred on 06.04.2010 at Chittode-Bhavani main road, near KSV Thirumanamandapam, while the injured was driving his motor cycle. The negligence on the bus driver at the time of accident is not under dispute.

4. The Tribunal, on considering the evidence placed before it and age of the victim, had fixed Rs.4,000/- as notional income of the injured and for amputation of the leg upto 1/3 of the thigh level, 80% total disability was fixed to ascertain the loss of income and a sum of Rs.7,83,200/- was awarded as compensation.

5. The appeal is preferred for enhancement of the compensation. Pending appeal, the claimant died and his legal representatives are brought on record.

6. The short point in this case is that whether fixation of Rs.4,000/- as notional income is proper and adequate. At the time of accident, the claimant was 30 years old and he claims to carry on business in bleaching and agricultural activities. But there is no documentary evidence. In any event, the Courts have taken liberal view, while fixing the notional income of a person based on skill and ability. In this case, there is no evidence to show any indication that the deceased had special skill or employment but fixation of Rs.4,000/- as notional income appears to be very low. Hence, it is fixed at Rs.7,000/- per month inclusive of future prospects and the multiplier '17' for the age of 30 is applied. Accordingly, the loss of earning capacity is computed as $7000 \times 80 / 100 \times 17 \times 12 = 11,42,400/-$.

7. The compensation awarded under other heads are unaltered. Accordingly, the compensation of Rs.6,91,200/- is enhanced to Rs.11,42,400/-. This appeal filed by the claimant with delay of 861 days. Hence for the said delay period, he is not entitled for interest.

8. Pending appeal, the appellant died and his wife, mother and two minor children are brought on record. Therefore, the



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compensation shall be apportioned among the claimants with proportionate interest as below:-

Appellants	Apportionment of compensation
2 nd Appellant, Wife	Rs.5,00,000/-
3 rd Appellant, Mother	Rs.2,00,000/-
4 th and 5 th Appellants Minor children	Rs.2,21,200/- each

The shares of the minor children Rs.2,21,200/- each to be invested in a nationalised bank till they reach majority.

9. The said 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 petition till the date of realization (less interest for 861 days), 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 as mentioned above with proportionate interest equally. The claimants 1 and 2 are permitted to withdraw the money on appropriate application.

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

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

vri

To

The Subordinate Judge,
Motor Accidents Claims Tribunal,
Bhavani.

Copy to:

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

CMA No.2544 of 2015

BR (CO)

K.RK. (14.09.2021)