IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 18..11..2020

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Civil Miscellaneous Appeal No.3513 of 2019

1.Vaidehi
2.Bhavani Shankar
3.Lalitha Lakshmi
4.Lakshmi

... Appellants/Petitioners

-Versus-

1.Rajasreenivasan
(R1 Notice dispensed with)
2.Reliance General Insurance Company Limited,
Having its Office at
"RAI's Tower", Plot No.2054,
2nd Avenue, 2nd Floor,
(Next to Senthil Nursing Home),
Anna Nagar, Chennai 600 040.

... Respondents/ Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the order and decree dated 06.01.2018 made in M.A.C.T.O.P.No.433 of 2014 by the Motor Accidents Claims Tribunal (IV Additional District Judge), Ponneri, Tiruvallur District.

For Appellant : Mr.F.Terry Chella Raja

For Respondents : Mrs.Harini for R2
R1 - Ex parte

JUDGEMENT

The appellants are claimants before the Motor Accidents Claims Tribunal. Seeking enhancement of compensation, they have come up with this civil miscellaneous appeal.

2. The case of the claimants before the tribunal is that the deceased Ramamoorthy is the husband of the 1st appellant, father of the appellants 2 and 3 and son of the 4th appellant. The deceased was 52 years old at the time of accident. On 15.03.2014 at about 10.00 p.m. while he was walking near

Meenambakkam Signal on GST Road, a two wheeler, owned by the 1st respondent and insured with the 2nd respondent, which came in a rash and negligent manner, dashed against the deceased as a result of which, he sustained serious injuries. He was immediately admitted at Government General Hospital at Chennai as in patient. Subsequently, he succumbed to the injuries on 20.03.2014. According to the claimants, the deceased was a self employed person, running the business of selling of Compact Disc and Tourist Map at Meenambakkam Airport. He was earning a sum of Rs.10,000/- per month from his business. He was the sole bread winner of the family. Hence, seeking compensation of Rs.13,50,000/- for the death of the deceased, the appellants filed the claim petition against the respondents.

3. The 1st respondent/owner of the two wheeler was remained absent and therefore, he was set ex parte before the tribunal. The 2nd respondent Insurance Company contested the claim petition contending that the accident had taken place not due to the negligence of the deceased and therefore, they are not liable to pay compensation to the appellants.

4. Before the tribunal, in order to prove their case, the appellants examined two witnesses as P.W.1 and P.W.2 and marked 8 documents as Exs.P.1 to P.8. Neither any witness was examined nor any document was marked on the side of the respondents. The tribunal on considering the available materials came to a conclusion that the accident had taken place only due to the rash and negligent riding of the rider of the two wheeler. At the time of accident, there was a valid insurance policy available and therefore, held that the 2nd respondent is liable to pay compensation. So far as the quantum of compensation is concerned, the tribunal fixed the monthly income of the deceased at Rs.7,000/- and after deducting 1/4th of the income towards personal expenses of the deceased had he been alive and adopting the multiplier of 11, calculated loss of dependency at Rs.7,92,000/-. Apart from the above, the tribunal awarded compensation under various conventional heads. The details of the compensation awarded by the tribunal are as follows:-

Serial Number	Particulars	Amount
1	Loss of Dependency [Rs.5,200/- X 12 X 11]	7,92,000
2	Loss of Love and Affection	15,000
3	Funeral Expenses	15,000
4	Loss of Consortium	40,000
	Total	8,62,000

Feeling aggrieved by the inadequacy of the compensation awarded by the tribunal, the petitioner is before this court with the instant appeal seeking enhancement of compensation.

5. I have heard the learned counsel for the appellants and the learned counsel appearing for the 2nd respondent and also perused the records carefully.

6. The learned counsel appearing for the appellant would submit that the deceased was running a Compact Disc selling shop and was earning a sum of Rs.10,000/- per month. But, the tribunal without assigning any valid reason has fixed the monthly income of the deceased notionally at Rs.7,000/- and after deducting 1/4th of the income towards personal expenses of the deceased, the tribunal held that the contribution to the family would have been Rs.5280/- per month. Further, the tribunal did not consider the future prospects of the deceased while determining the compensation.

7. The learned counsel appearing for the appellants further contended that as per the dictum laid down by the Hon'ble Supreme court in National Insurance Company Limited v. Pranay Sethi (2017) 16 SCC 680 and United India Insurance Co. Ltd., v. Satinder Kaur @ Satwinder Kaur, Manu/SC/0500/2020 [Civil Appeal No.2705 of 2020 dated 30.06.2020}, the 2nd and 3rd appellants, who are children, and the 4th appellant, who is the mother of the deceased, are entitled to get a sum of Rs.40,000/- each towards loss of love and affection whereas the tribunal has awarded only a sum of Rs.15,000/- under the head.

8. Per contra, the learned counsel appearing for the 2nd respondent submitted that even though it is claimed that the deceased was running a Compact Disc selling shop, there was no valid evidence adduced to support their case. The tribunal has, however, fixed the monthly income of the deceased notionally at Rs.7,000/- which is proper and correct and after deducing 1/4th towards the personal expenses of the deceased, assessed the monthly contribution of the deceased to the family at Rs.5,250/- . There is no error apparent in it. So far as the loss of love and affection is concerned, the learned counsel fairly submitted that the appellants 2 to 4 are entitled to a sum of Rs.40,000/- each towards loss of love and affection.

9. I have considered the rival submissions carefully.

10. The accident was taken place in the year 2014. At the time of accident, the deceased was aged 52 years. The contention of the appellants is that the deceased was running a Compact Disc and Tourist Map Selling shop and was earning a sum

of Rs.10,000/- per month. But, the tribunal while rejecting the claim of the petitioner on the ground that there was no evidence as to the income, assessed the income of the deceased notionally at Rs.7,000/- per month and awarded compensation towards loss of dependency at Rs.7,92,000 as already discussed supra. However, considering the nature of the business, which was run by the deceased, this court is of the considered view that the deceased could have easily earned at least a sum of Rs.8,000/- per month and hence fixing the monthly income of the deceased notionally at Rs.8,000/- would be proper and correct. Further, as rightly pointed out by the learned counsel for the appellant, the tribunal did not consider the future prospects of the deceased. Therefore, if the benefit of 10% is given towards future prospects as per the law laid down in the cases of Pranay Sethi and Satinder Kaur @ Satwinder Kaur, cited supra, the monthly contribution of the deceased to the family would have been Rs.8,800/-. If 1/4rd of the income is deduced towards the personal expenses of the deceased, the contribution to the family would have been Rs.6,600/-. The deceased was 52 years old at the time of accident and as such multiplier of 11 could be adopted for calculation of the loss of dependency. Therefore, the loss of dependency would be calculated as Rs.6,600 x 12 x 11 = Rs.8,71,200/-

11. Further, even though the tribunal awarded a sum of Rs.40,000/- towards loss of consortium to the 1st appellant who is the wife of the deceased, so far as loss of love and affection is concerned, the amount awarded by the tribunal is very low and therefore, the appellants 2 to 4 are entitled to a sum of Rs.40,000/- each towards loss of love and affection. Further, no amount has been awarded by the tribunal towards loss of estate and therefore, a sum of Rs.15,000/- could be awarded to the appellants under the head. The amount awarded by the tribunal under the heads of consortium and funeral expenses appear to be just and reasonable and hence the same stand confirmed. Thus, the appellants in all are entitled to a sum of Rs.10,61,200/- as compensation. Accordingly, the compensation awarded by the tribunal stands modified as follows:-

Serial Number	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted or reduced (Rs.)
1.	Loss of Dependency	7,92,000	8,71,200	Enhanced

Serial Number	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted or reduced (Rs.)
2.	Loss of Love and Affection	15,000	1,20,000	Enhanced
3.	Funeral Expenses	15,000	15,000	Confirmed
4.	Loss of Consortium	40,000	40,000	Confirmed
5.	Loss of Estate	-	15,000	Granted
	Total	8,62,000	10,61,200	Enhanced by Rs.1,99,200

12. The appellants 2 and 3 are married and they have been living separately and the 4th petitioner is the age old mother of the deceased. The 1st appellant is the widow of the deceased. Therefore, the amount of compensation enhanced by this court together with interest should be given to 1st appellant alone.

In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation of Rs.8,62000/- awarded by the Tribunal is hereby enhanced to Rs.10,61,200/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. The appellants are directed to pay necessary Court fee, if any, on the enhanced compensation. The 2nd respondent is directed to deposit the award amount directed above along with interest and the costs directed by the tribunal, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. As already stated supra, the 1st appellant alone is entitled to the compensation enhanced herein above together with interest besides her share as ordered by the tribunal. On such deposit, the appellants are at liberty to withdraw their respective shares together with proportionate interest by making appropriate applications before the tribunal. Considering the facts and circumstances of the case, both parties shall bear their own costs in this appeal.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

kmk

To
1.The IV Additional District Judge (Motor Accidents Claims Tribunal),
Ponneri, Tiruvallur District.

Copy to:
The Section Officer, VR Section, High Court,Madras.

+1cc to M/s.Malar , Advocate SR.No. 37005

C.M.A.No.3513 of 2019

MG CO
A.SK(08.03.2021)