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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved :05.11.2020
Pronounced on :18.11.2020

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.M.A.No.153 of 2016

1.Perumayee

2.Jayalakshmi

.. Appellants /Claimants

/versus/

1.S.Thenmozhi

2.The United India Insurance Company Ltd.,
Muthiah Complex, 2nd Floor,
No.1170, Mettur, Erode District.

(The 1st respondent remained exparte before
the Tribunal, hence notice may be dispensed
with for the 1st respondent in this appeal)

.. Respondents/Respondents

Prayer : Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against to enhance the compensation amount awarded in the judgment and decree dated 13.02.2015 made in M.C.O.P.No.650 of 2010 on the file of MACT/Principal District Court at Namakkal, with interest and cost by allowing this Civil Miscellaneous Appeal.

For Appellants :Mr.MA.P.Thangavel

For Respondents:Mrs.I.Malar for R2
R1-exparte

J U D G M E N T

(The case has been heard through Video Conferencing)

The appeal is filed by the claimants in M.C.O.P.No.650/2010 seeking enhancement of compensation.

2. The facts leading to the appeal is as below:-

On 14/11/2009 at about 10.00 pm, when the deceased Jayakumar was proceeding in his TVS Champ motorcycle bearing registration



No. TN 28 C 6319 along the Namakkal to Thuraiyur main road at Pattaraimeadu, he hit a stationed lorry bearing registration No. TN 28 X 9505 parked in the middle of the road in the dark of night without any indicator or signal. He sustained injuries and died on the way to hospital. The accident victim was a B.Sc. graduate pursuing his B.Ed. course. He had very bright future prospects. Claiming compensation of Rs.10,00,000/-, petition was filed by the mother and sister of the deceased against the owner and insurer of the lorry.

3. The insurer defended the claim stating that the claim petition is bad for non-joinder of necessary party namely, the driver of the lorry. The claim petition is not maintainable, since the claimant is the tortfeasor, who died in the accident after hitting on the stationed lorry, which was parked on the extreme of the road margin. The victim has contributed to the accident. Hence, his contributory negligence for the accident has to be taken note for determining the compensation.

4. The tribunal, after considering the oral evidence of the first claimant and one A. Ramesh eyewitness to the accident along with the 17 documents filed through these witnesses, awarded a sum of Rs.5,01,000/- as compensation along with 7.5% from the date of realisation (excluding the period of dismissal for default from 16/03/2012 to 17/03/2013) and costs.

5. In the appeal for enhancement, it is contended that, the tribunal ought to have fixed the notional income of the deceased as Rs.10,000/- p.m instead of Rs.4,500/- p.m taking into consideration his education qualification and the dictum of Supreme Court. The tribunal ought to have considered the future prospect of the deceased, who had completed B.Sc. (Computer Science) and pursuing his B.Ed. course and ought to have duly compensated proportionate to his qualification, skill and earning capacity. The deduction towards personal expenses should have been only $\frac{1}{3}$ rd instead of $\frac{1}{2}$. Further, the compensation under other non-conventional heads ought to be enhanced adequately taking note of the age of the deceased and the claimants who solely dependant on the deceased.

6. The learned counsel for the 2nd respondent- Insurance company submitted that the deceased at the time of accident was 20 years old. He had no income of his own. The tribunal fixation of notional income at Rs.4,500/- is proper and adequate for an unemployed graduate. Being a bachelor, the tribunal has rightly deducted $\frac{1}{2}$ of his notional income for his personal expenses. As per the Apex Court guidelines and there is no error in deducting 50% for personal expenses. The accident occurred due to the rash and recklessness of the deceased, who dashed against the stationed lorry parked on the mud road of the road margin. The



Tribunal ought to have deducted for the contribution of the deceased in the accident.

7. Heard the counsels of respective parties. Records perused.

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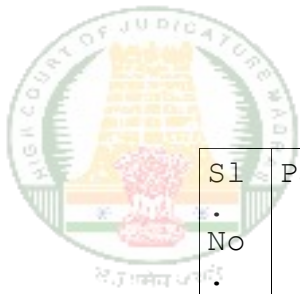
8. The first claimant is the mother and the second claimant is the married elder sister of the deceased Jayakumar. It is a proven fact that the deceased was 20 years old B.Sc. graduate when he died in the accident. The compensation for fixing the loss of earning ought to be proportionate to the qualification, skill and capacity to earn in the present and in the future. From the tribunal award, this Court finds that the compensation under the head loss of income appears to be low, without adding future prospect. Hence, the award of the tribunal requires enhancement as per the standardised formula given by the Hon'ble Supreme Court.

9. Regarding the liability and allegation of contribution by the accident victim, the contention of the insurer that there was contribution on the part of the victim to the accident, this Court negative it in view of the First Information Report registered against the lorry driver for negligently parking the lorry in the middle of the road and the insurance company have not let in contra evidence to show that the deceased had contributed to the accident.

10. Taking the lead from the Supreme Court judgments, the award passed by the tribunal is modified and enhanced by fixing the notional monthly income as Rs.8000/- with 40% towards future prospects. $(Rs.8000 + 3200 = 11,200/-$ after deduction 50% towards his personal expenses the contribution to his family is fixed as Rs.5,600/- per month. Taking his age as 20 years and applying the multiplicand '18', the loss of dependency is arrived as $Rs.5600 \times 12 \times 18 = Rs.12,09,600/-$. For loss of love and affection, each claimants are entitled for Rs.40,000/- $(Rs.40,000 \times 2 = Rs.80,000)$. Towards funeral expenses and loss of estate Rs.15,000/- each $(Rs.30,000)$ is awarded. In total, the claimants shall be entitled for a total compensation of Rs.13,19,600/- with interest as per the tribunal award.

11. break up details of the award passed by this Court is as below:

Sl No .	Particulars	Award passed by the Tribunal (Rs.)	Award passed by this Court (Rs.)	Enhanced/ Confirmed/ Reduced/ Awarded
1.	Loss of income	4,86,000-00	12,09,600-00	Enhanced



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S1 No.	Particulars	Award passed by the Tribunal (Rs.)	Award passed by this Court (Rs.)	Enhanced/ Confirmed/ Reduced/ Awarded
2.	Loss of Love and affection (each Rs.15,000/-)	10,000-00	80,000- 00 (40000x2)	Enhanced
3.	Funeral expenses	5,000-00	15,000- 00	Enhanced
4.	Loss of estate	----- -	15,000- 00	Awarded
	Total	5,01,000-00	13,19,600-00	Enhanced

12.The First claimant/mother shall apportion Rs.10,00,000/- with the proportionate interest. The second claimant/sister shall apportion Rs.3,19,600/- with th proportionate interest. The appellants were exempted to pay Court fees in the appeal for the present. They are now directed to pay the deficit Court fees as per the award enhanced. The 2nd respondent-insurance company is directed to deposit the compensation within 6 weeks from the date of receipt of this order, less the amount already deposited if any. On such deposit, the appellants are permitted o withdraw their respective shares.

13. In the result, this Civil Miscellaneous Appeal is partly allowed. No order as to costs.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

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To:

Motor Accident Claims Tribunal,
Principal District Court,
Namakkal.

Copy to:
The Section Officer,
V.R.Section, High Court,
Madras-104.



+1cc to Mr.Ma.P.Thangavel, Advocate, S.R.No.36992

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LN(CO)
CB(31/08/2021)