IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.11.2020

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.1680 of 2016

1.T.Thilagavathy

2.V.Ramachandran ...Appellants

Vs

1.P.Elambarithi

2.ICICI Lombard General Ins. Co. Ltd.,
No.805/200, Velachery Main Road,
Selaiyur, Chennai-73. ...Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 19.06.2014 made in M.C.O.P. No.911 of 2012 on the file of the Motor Accidents Claims Tribunal, III Additional District Court, Tiruvallur at Poonamallee.

For Appellants : Mr.K.Varadhakamaraj

For Respondents : No Appearance

J U D G M E N T

(The case has been heard through Video Conferencing)

Heard the learned counsel for the appellant.

2. The appeal is preferred by the claimants being aggrieved that the compensation awarded by the Tribunal for the loss of their son in the road accident is inadequate and not a just compensation.

3. On 25/26.04.2012, while the son of the claimants was riding his motor cycle bearing Registration No.TN 20 BM 0023 along Sardar Patel Road, Halda Junction, Guindy, a Van bearing Registration No. TN-20-AW-6075, driven rash and negligently by its driver, dashed against the motor cycle and caused fatal injury to Lalith Kumar, son of the claimants. At the time of the

accident, the deceased was working as Design Engineer in Axis IT Company, Catter pillar, earning a sum of Rs.21,000/- per month. He was 26 years old at the time of accident and had a fair future prospects. Due to the sudden death of their son in the road accident, the claimants have been put to loss, which they have assessed at Rs.25,00,000/- and a claim petition was filed against the owner of the offending van and the insurer.

4. Before the Tribunal, to prove the income of the deceased, the claimants have filed pay slips issued by the employer of the deceased for the month of January, February and March 2012. The FIR and Post Mortem Certificate were relied upon by the claimants to show that the accident occurred due to the negligence of the van driver and in the said accident, Lalith Kumar died. The Tribunal, after considering the income certificate and age of the deceased and the claimants, had fixed the monthly salary of the deceased at Rs.20,895/- based on pay slips Exs.P11 to P14 and had applied multiplier 11 based upon the claimants age and deducted 1/3 towards personal expenditure. Under the heads of loss of love and affection, transport, funeral expenses, a sum of Rs.30,000/- was awarded, in addition to the compensation of loss of income Rs.16,84,884/-.

5. In the present appeal, the learned counsel for the claimants would submit that the Tribunal has erred on three grounds. First, multiplier applied by the Tribunal is erroneous, it has taken the age of the claimants instead of the age of the deceased. If the age of the deceased as laid down by the Supreme Court Judgments is taken for consideration, the right multiplier should be “17”. Secondly, the Tribunal has not awarded any additional compensation towards future prospects and thirdly, the learned counsel would contend that as per Pranay Sethi's judgment (2017 (2) TN MAG 609 (SC)), the compensation under the heads loss of consortium, funeral and loss of estate not been properly arrived.

6. Perusal of the award, this Court finds that the Tribunal, in fact, has erred in deducting 1/3 of the income towards personal expenditure instead of 50%. The victim died as Bachelor and the settled law is to deduct 50% towards personal expenses. Since the claimants are entitled for future prospects as per the principle laid down under Pranay Sethi's case, appropriate fixation of award as per the dictum of the Supreme Court is warranted.

7. On considering the submission and the records, the award of the Tribunal regarding the compensation is modified as below:

The monthly income of the deceased is taken as

Rs.20,895/-. To this, on adding 40% towards future prospects, it comes to Rs.29253/- (Rs.20,895+ Rs.8358=29253). To this 10% towards income tax is deducted, to fix the income as Rs.26,328/- (29253-2925). After deducting 50% of the income towards personal expenditure of the deceased from the monthly income of the deceased, the possible contribution to the dependants will be Rs.13,164/-. Since the age of the deceased was 26 at the time of accident, multiplier '17' is applied. Thus, the compensation for loss of income is computed as (13164X12X17=Rs.26,85,456/-).

Compensation under Various Heads	Award passed by this Court
Loss of income (13164X12X17)	Rs.26,85,456/-
Loss of love and affection to the claimants	Rs. 80,000
Funeral Expenses	Rs. 15,000/-
Loss of Estate	Rs. 15,000/-
Total	Rs.27,95,456/-

The said amount shall carry interest at the rate of 7.5% p.a. from 11.09.2012 till the date of realisation. The award amount shall be equally apportioned by the claimants. The respondent Insurance Company is directed to deposit the award amount within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants are entitled to withdraw the same on petition.

6. Accordingly, the Civil Miscellaneous Appeal is partly allowed. No order as to costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

vri

To

The Motor Accidents Claims Tribunal,
III Additional District Court,
Tiruvallur, Poonamallee.

+1cc to Mr.Varadhakamaraj, Advocate Sr.36532

CMA NO.1680 OF 2016

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