

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

CMA.No.3467 of 2012

1.J.Noorjahaan

2.J.Nawaz Sheriff @ Mohammed Nawaz Sheriff(Minor)

(Minor rep. by his mother & N.F, the 1st petitioner)

... Appellants/Petitioner

vs.

1.R.Shanthi Gnanam

2.Reliance General Insurance Co. Ltd.,
Regional Office: Reliance House,
6th Floor, No.6, Haddows Road,
Nungambakkam, Chennai - 6.

... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 28.06.2012 in M.C.O.P.No.2777 of 2008 on the file of Motor Accident Claims Tribunal, Chief Small Causes Court, Chennai.

For Appellants : Mr.N.M.Muthurajan

For respondents : Mr.S.Arunkumar for R2

R1 - exparte

J U D G M E N T

The appellants are the claimants in MCOP.No.2777 of 2008 on the file of the Motor Accident Claims Tribunal / Chief Small Causes Court, Chennai. They filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 and Rule 3 of MACT Rules praying to award compensation of Rs.12,00,000/- for the death of B.Zakir Hussain, husband of the first appellant and father of the second appellant in a road accident that took place on 29.01.2008.

2. The case of the appellants / claimants is that on 29.01.2008, at about 23.30 hours, the deceased was crossing GST road (NH 45) near Melavalampettai bus stop, Mathuranthagam. At that time, a mini lorry bearing Registration No. TN 67 E 6381 came in a rash and negligent manner and hit him, as a result of which, he sustained fatal injuries. Immediately, he was taken to the Hospital. However, he succumbed to the injuries on 02.02.2008. The contention of the claimants is that the accident took place due to the rash and negligent act of the driver of the said mini lorry. Therefore, they filed claim petition seeking compensation.

3. Before the Tribunal, on the side of the appellants / claimants, PW1 to PW3 were examined and Exs.P1 to P5 were marked. On the side of the respondents therein, no documentary or oral evidence was marked.

4. The first respondent remained absent before the Tribunal and therefore, he was set exparte. The learned Chief Judge, Small Causes Court, Chennai vide decree and Judgment dated 28.06.2012, awarded compensation of Rs.6,36,000/- together with interest at the rate of 7.5% per annum to the claimant. Not satisfied with the quantum of compensation awarded by the Tribunal, the claimants have come out with the present appeal.

5. The learned counsel appearing for the appellants / claimants would contend that since the deceased was aged 33 years on the date of the accident, multiplier '17' should have been adopted. He would further submit that the deceased was as a Mason earning a sum of Rs.400/- per day. However, the Tribunal fixed notional income only as Rs.4,500/- per month, which is meagre. He submitted that the aspect of future prospects has not been considered by the Tribunal while awarding compensation. He also prayed for enhancing the compensation under other heads.

6. The learned counsel appearing for the second respondent would submit that the Tribunal after considering both oral and documentary evidences in a proper perspective, awarded compensation, which is not meagre. The appellants have not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

7. Heard the learned counsel appearing for the appellant and second respondent and perused the materials available on record.

8. In the claim petition, it was stated that the deceased was a Mason, aged 33 years, earning a sum of Rs.400/- per day. In the absence of any evidence to prove the avocation and income of the deceased, the Tribunal fixed Rs.4,500/- as monthly notional income which cannot be said to be on the lower side. Since there are two persons depending on the income of the deceased, the Tribunal rightly deducted 1/3rd towards the personal expenses of the deceased. As per the decision rendered in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121, the multiplier to be adopted is 16 and the Tribunal also adopted the same. Therefore, the Tribunal rightly awarded a sum of Rs.5,76,000/- towards loss of pecuniary benefits. However, this Court is of the view that Rs.20,000/- awarded towards loss of consortium is meager. Hence, the same is enhanced to Rs.30,000/-. a sum of Rs.20,000/- awarded to the second appellant towards loss of love and affection is hereby confirmed. It is to be noted that the deceased was only 33 years on the date of the accident. Therefore, Rs.10,000/- awarded towards loss of expectation of life is enhanced to Rs.20,000/-. The accident is of the year 2008 and therefore, Rs.10,000/- awarded towards funeral expenses is just and it is hereby confirmed. Thus the compensation awarded by the Tribunal is modified as follows:

S.N o	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)
1	Loss of Pecuniary benefits	5,76,000	5,76,000
2	Loss of consortium	20,000	30,000
3	Loss of love and affection to the second appellant	20,000	20,000
4	Loss of expectation of life	10,000	20,000
5	Funeral expenses	10,000	10,000
	Total	Rs.6,36,000/-	Rs.6,56,000/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.6,36,000/- is hereby enhanced to Rs.6,56,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellants / claimants are directed to pay necessary Court fee, if any, on the enhanced

compensation. The first and second respondents are directed to deposit the enhanced award amount now determined by this Court jointly and severally with interest, less the amount already deposited if any, to the credit of MCOP.No.2777 of 2008 on the file of the Chief Small Causes Court / Motor Accident Claims Tribunal, Chennai within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the first appellant is permitted to withdraw her respective share of the enhanced award amount on the basis of apportionment fixed by the Tribunal along with proportionate interest and costs, less the amount if any, already withdrawn. The second appellant is a minor and therefore, his share of compensation is ordered to be deposited in any one of the nationalized banks until he attains majority. No costs.

-s/d-
Assistant Registrar

True copy
Sub-Assistant Registrar

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

Copy to

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

+1 cc to M/s.S.Arunkumar Advocate sr7815
+1 cc to Mr.N.M.Muthurajan Advocate sr8701

CMA.No.3467 of 2012

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