IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.10.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.3490 of 2012
(Through Video Conferencing)

1.Susheela

2.Ramalakshmi ... Appellants

Vs.

1.A.B.Haribabu

2.The Bajaj Allianz General Insurance Co., Ltd.,
Bhagwathi Palace, II Floor,
No.13, 3rd Avenue,
Anna Nagar East,
Chennai 600 102. .. Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 29.06.2012 made in M.C.O.P.No.516 of 2009 on the file of the Motor Accidents Claims Tribunal, (II Additional District Judge) Poonamallee.

For Appellants : Mr.J.Mahalingam

For 2nd Respondent : M/s.N.Somasundaar

R1 : Exparte

J U D G M E N T

The Civil Miscellaneous Appeal has been filed by the appellants-claimants against the impugned Judgment and Decree dated 29.06.2012 passed by the Motor Accident Claims Tribunal Chennai, (II Additional District Judge) Poonamallee in M.C.O.P No.516 of 2009. For brevity referred to as the Tribunal and the impugned order respectively.

2. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.7,10,199/- together with interest at 7.5% per annum from the date of filing of the claim petition till the date of deposit, to the appellants/claimants, who are the wife and mother of the deceased Manikandan. The appellants/claimants have filed this Civil Miscellaneous Appeal for enhancement of compensation.

3. In the claim petition, it was stated that on 10.08.2008 at about 21.30 hrs., when the deceased Manikandan was riding in a bicycle at Anna Salai, Chamber Road Nandanam Signal and had crossed more than 3/4th of the road from east to west, a car bearing Reg.No.TN-09-Q-1112 belonging to the 1st respondent insured with the 2nd respondent driven in a rash and negligent manner dashed against him and caused fatal injuries.

4. The Tribunal after considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving of the driver of the insured car and therefore directed the 2nd respondent / Insurance Company to pay a sum of Rs.7,10,199/- as compensation together with interest and cost from the date of the claim petition till the date of deposit to the appellants/claimants. The break up of the amount awarded by the Tribunal are summarised below:-

| | |
|---|---|
| For loss of income - Rs.4,821/- x 12x 1/3 x 17 | Rs.6,55,656/- |
| Loss of consortium to the 1st appellant | Rs.20,000/- |
| Loss of love and affection | Rs. 5,000/- |
| Medical expenses | Rs. 19,543/- |
| Transport Expenses | Rs. 5,000/- |
| Funeral expenses | Rs.5,000/- |
| Total | Rs.7,10,199/- |



5. The learned counsel for the appellants submits that the Tribunal erred in awarding the lower compensation ignoring the fact that the deceased was earning a sum of Rs.5,589.60/- p.m. and but has taken only Rs.4,821/- p.m. It is further submitted that the Tribunal erred in not awarding compensation towards future prospects. Therefore, he prayed for enhancement of compensation.

6. The learned counsel appearing for the second respondent-Insurance Company submits that awarding the

aforesaid compensation, a sum of Rs.1800/- which has to be deducted from the income of the deceased. He further submits that the impugned Judgment and decree passed by the Tribunal was otherwise well reasoned and requires no interference and therefore prayed for a dismissal of the present appeal.

7. I have considered the arguments of the learned counsel for the appellants and the learned counsel for the second respondent-Insurance Company and also perused all the materials available on record.

8. It is noticed that the deceased Manikandan was working as a Salesman in Nalli Silks, Adyar and was earning a sum of Rs.6,000/- p.m.and that one Karthikeyan who was examined as P.W.3, who was the Asst.Manager of Nalli Silk had deposed that the deceased was taking home salary at Rs.4,821/- p.m. plus a sum of Rs.15/- as daily batta. The said Karthikeyan further deposed that Nalli Silk was paying a sum of Rs.1,800/- as family pension to the appellants/claimants.

9. In my view, the Tribunal erred in considering a sum of Rs.4,821/- p.m. as salary for awarding the aforesaid compensation. Even as per the decision of the Hon'ble Supreme Court in Syed Sadiq Vs. United India Insurance Co.Ltd., (2014) 2 SCC 735, the notional income of a vegetable vendor was considered as Rs.6,500/- per month. In this case, the deceased Manikandan was earning a gross salary of Rs.5,589.60/- p.m. I am inclined to accept the income of the deceased as Rs.5,589.60/- per month for the purpose of awarding compensation.

10. As per the decision of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC Supreme Court (Sarla Verma vs. Delhi Transport Corporation), the correct multiplier to be applied is 16 and not 17. Therefore, the amount awarded towards loss of income is to be recomputed.

11. Compensation awarded by the Tribunal is to be partially enhanced in terms of the decision of the Hon'ble Supreme Court in National Insurance Company Limited Vs. Pranay Sethi and Others, (2017) 16 SCC 680 towards future prospectus at 40% to the income of the deceased. As per the decision of the Hon'ble Supreme Court in Magma General Insurance Company Ltd. Vs. Nanuram @ Chuhru Ram and Others, (2018) 18 SCC 130 compensation towards loss of consortium is to be awarded.

12. The Tribunal has also awarded a sum of Rs.19,543/- towards medical expenses and a sum of Rs.5,000/- towards transport expenses and the same are hereby confirmed. The other heads are also hereby modified. Consequently, I am inclined to re-quantify the compensation awarded under the various heads as follows.

| Heads and Calculation | Re-quantified Amount by this Court |
|---|---|
| Loss of dependency:-<br>Monthly Income of the deceased: Rs.5,589.60/-<br>Add: Future Prospectus at 40% : Rs.2,235.84/-<br>(5,589.60/- x 40/100)<br>----------------<br>: Rs. 7,825.44<br>Less: Personal Expenses of the deceased at 1/3rd<br>(9,800 x 1/3th)<br>: Rs. 2,608.48<br>----------------<br>Average monthly contribution to the family<br>: Rs. 5,216.96<br>----------------<br>Average Annual contribution to the family (5,216.96x12) : Rs.62,603.52<br>Multiplier - 16 (88,200 x 16) : Rs.10,01656.32 | Rs.10,01,656.32 |
| Loss of consortium | Rs.40,000.00 |
| Loss of love and affection | Rs.40,000.00 |
| Medical expenses | Rs.19,543.00 |
| Transport Expenses | Rs. 5,000.00 |
| Funeral expenses | Rs. 10,000.00 |
| Total | Rs.11,16,199.32<br>Rounded off to Rs.11,17,000/- |

13. Therefore, the 2nd respondent Insurance Company is directed to deposit the enhanced amount of compensation of Rs.4,06,800/- (Rs.11,17,000 - Rs.7,10,199 = Rs.4,06,801

rounded off to Rs.4,06,800/-) and balance amount of compensation and cost awarded by the Tribunal, if any, together with interest at 7.5% per annum from the date of filing of the claim petition till the date of deposit within a period of six weeks from the date of receipt of a copy of this Judgment. The appellants are directed to pay necessary Court fee, if any, on the enhanced compensation.

14. On such deposit, the 1st and 2nd appellants are permitted to withdraw their respective shares with accrued interest as per apportionment fixed by the Tribunal, after adjusting the amount, if any, already withdrawn, by filing suitable applications before the Tribunal.

15. Accordingly, this Civil Miscellaneous Appeal stands partly allowed. No cost.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

Kkd

To:

1.The Motor Accident Claims Tribunal
(II Additional District Judge),
Poonamallee.

2.The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mr.N.Somasundar, Advocate, S.R.No. 33233





SVI(CO)

GN(07/04/2021)