



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.02.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2772 of 2013

1. N.Saravanan
 2. S.Ramya
(Declared as major in M.P.No.2175 of 2010
dated 09.07.2010)
 3. S.Sripriya (Minor)
 4. S.Madumitha (Minor)
 5. S.Varsha (Minor)
(Minors 3 to 5 rep. by Next Friend
Thiru.N.Saravanan)
- ...Appellants/Petitioners

Vs.

1. R.Nammalwar
(Was set exparte in the Trial Court)
 2. The Oriental Insurance Company Ltd.,
No.8, Esplanade,
Chennai - 108.
- ...Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the judgment and decree dated 14.12.2009 made in M.C.O.P.No.809 of 2005 on the file of the Motor Accidents Claims Tribunal, IInd Judge, Court of Small Causes, Chennai.

For Appellants : Mr.K.Satyanarayanan

For R2 : Mr.T.Kumar

R1 - Exparte

JUDGMENT

This Civil Miscellaneous Appeal has been filed aggrieved by the judgment and decree dated 14.12.2009 made in M.C.O.P.No.809 of 2005 on the file of the Motor Accidents Claims Tribunal, IInd Judge, Court of Small Causes, Chennai.

2. The case of the appellants is that on 02.07.2004 at about 12.15 hours, the deceased S.Padmini was riding her motorcycle



bearing Registration No.TN09 M 3147 from South to North direction near Chindaripet MRT Railway Bridge in Anna Salai. At that time, the first respondent's lorry bearing Registration No.TNQ 7107 came from behind in a rash and negligent manner and dashed against the motorcycle. As a result, the deceased sustained fatal injuries and died on the way to hospital. The accident had occurred only due to rash and negligent driving of the driver of the lorry bearing Registration No.TNQ 7107. Hence, the appellants filed a petition before the Motor Accident Claims Tribunal, IInd Judge, Court of Small Causes, Chennai, claiming Rs.18,00,000/- as compensation under various heads.

3. The learned counsel for the appellants submitted that even though the Trial Court has correctly held that the negligence was on the part of the driver of the First respondent's lorry bearing Registration No.TNQ 7107 has caused the accident has grossly erred in deciding the quantum of compensation that was payable to the appellants herein. The Trial Court has erred in taking into account of the monthly income of the deceased who was doing business in different names and styles at the time of the death and also deposed by PW1 to prove the correctness of the income. Whereas the Trial Court had fixed Rs.4,500/- as the deceased monthly income and further deducted 1/3rd from her towards personal expenses of the deceased and arrived at Rs.6,12,000/- as dependency of the family consisting of her husband and four minor daughters and hence monthly income fixed by the Trial Court is too low. The Appellants further state that the deceased had earned a sum of Rs.10,000/- per month as a business woman to prove and substantiate her monthly income, the appellants had filed Ex.P7 to Ex.P17 were marked but the same was not considered by the Trial Court.

4. The learned counsel for the appellants submitted that the Trial Court has erred in awarding only a sum of Rs.20,000/- against the claim of Rs.1,00,000/- towards loss of love and affection to the deceased wife and two sons, Rs.10,000/- against the claim of Rs.15,000/- towards funeral and final rites expenses, Rs.10,000/- against the claim of Rs.50,000/- under the head of both mental agony and shock, Rs.10,000/- against the claim of Rs.75,000/- towards loss of consortium to the first appellant, Rs.10,000/- against the claim of Rs.90,000/- towards loss of estate, Rs.10,000/- as against the claim of Rs.75,000/- towards loss of gratuitous services of house wife, Rs.10,000/- as against the claim of Rs.35,000/- towards pain and suffering. In any event the Trial Court has grossly erred in awarding only a sum of Rs.6,92,000/- as against claim of Rs.18,00,000/- by the appellants.

5. Heard the learned counsel for the appellants and the



learned counsel for the second respondent, and perused the materials available on record.

6. On perusal of the records, it is observed that on the side of Appellants Thiru.N.Saravan (PW1) and Thiru. Ravi (PW2) were examined as witnesses and the Appellants produced certain documents which were marked as Exs.P1 to P17 viz., Copy of FIR (Ex.P1), Copy of Plan (Ex.P2), Copy of Charge Sheet (Ex.P3), Postmortem Certificate (Ex.P4), Death Certificate (Ex.P5), Legal heirs Certificate (Ex.P6), Rental Agreement (Ex.P7), B.S.N.L. Telephone Bills (Ex.P8), Letter Head of OM Sakthi Transport (Ex.P9), Bank Statement of OM Sakthi Transport (Ex.P10), Milk Agency Bills (Ex.P11), LIC Agent Identity Card (Ex.P12), LIC Policy Holder's List (Ex.P13), LIC Agent Commission bills (Ex.P14), Bank Statement for LIC Agent Commission (Ex.P15), Income Tax Pan card (Ex.P16) and Income Tax Statement (Ex.P17). Neither any witness was examined nor any document was marked on the side of respondents.

7. The appellants have marked sufficient documents to prove the income of the deceased, but inspite of the same, the Tribunal fixed the income meagerly at Rs.4,500/- per month, and this Court is inclined to modify the same. Accordingly, a sum of Rs.6,000/- is fixed as income of the deceased. As per the case Sarla Verma and others vs Delhi Transport Corporation and another reported in 2009 ACJ 1298, if the number of dependents in the family are 4 to 6, $1/4^{th}$ of the income should be deducted for personal expenses of the deceased. In this case, the number of dependents are 5. But the Tribunal has wrongly deducted $1/3^{rd}$ of the income for personal expenses of the deceased instead of deducting $1/4^{th}$ while computing Pecuniary loss, and this Court is inclined to modify the same. Accordingly, a sum of Rs.9,18,000/- ($6000-1500 \times 12 \times 17$) is awarded for pecuniary loss. The sum of Rs.10,000/- awarded for Loss of Gratuitous Service is not found to be reasonable, hence the same is hereby removed. The sum of Rs.20,000/- awarded for Loss of estate is found to be higher, hence the same is hereby reduced to Rs.10,000/- The Tribunal has awarded only Rs.20,000/- towards loss of love and affection for four minor appellants, which is found to be very meagre. Hence, this Court is inclined to enhance the same. Accordingly, a sum of Rs.80,000/- i.e. Rs.20,000/- per person, is hereby awarded for loss of love and affection. The Tribunal has awarded only Rs.10,000/- towards loss of consortium which is also a meagre one. Hence, this Court is of the view that the same shall be enhanced. Accordingly, a sum of Rs.30,000/- is hereby awarded for loss of consortium.

8. In view of the above observations made by this Court, the compensation awarded by the Tribunal is modified as follows:



To

1. The Motor Accidents Claims Tribunal,
Ind Judge, Court of Small Causes, Chennai.

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

+lcc to Mr.N.Sampath, Advocate, S.R.No.16951

+lcc to Mr.K.Suryanarayanan, Advocate, S.R.No.16158

C.M.A.No.2772 of 2013

LN(CO)

RGA(14/09/2021)