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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:06.10.2020

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THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.M.A.No.1942 of 2016

1. D.Padma
2. D.Ganapathi
3. D.Tamilarasan
4. Chenniammal

...Appellants

/versus/

1. K.R.Kannan
2. P.Balaji
3. Royal Sundaram Insurance Company Limited,
Krishna Plaza, 1st Floor,
No.1, Nachiappa Street,
Behind Bus Stand,
Erode - 638 001.

...Respondents

Prayer: This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act praying to enhance the compensation amount awarded in the fair and final order dated 29.01.2016 made in M.C.O.P.No.161 of 2015 on the file of the Court of Motor Accident Claims Tribunal (Special District Court), Erode by allowing this Civil Miscellaneous Appeal.

For Appellants : Mr.C.E.Pratap

For R1 & R2 : No appearance

For R3 : M/s.Harini
for Mr.N.Vijayaraghavan

J U D G M E N T

(The case has been heard through video conference)

This appeal is preferred by the claimants seeking enhancement of compensation.

2.The facts of the case is that on 06.02.2015, while the deceased Devaraj was riding his TVS moped bearing Reg.No.TN 33 E 0137 along Erode to Kavindapadi Road, near Kavindapadi Bridge, a tipper lorry bearing Reg.No.TN 36 AA 0189 rash and negligently



dashed against TVS moped. Devaraj sustained greivous injury and was taken to the hospital. But he died on the way to the hospital. The wife, two sons and aged mother of the deceased Devaraj have filed a claim petition seeking Rs.20,00,000/- as compensation with interest at the rate of 12% p.a.

3.In the claim petition, it has been stated that the deceased Devaraj at the time of accident he was aged about 40 years and was earning Rs.20,000/- per month as a tractor driver-cum-agricultural supervisor under one Marisamy. The Insurance Company contested the claim petition on the ground that the deceased Devaraj was not earning Rs.20,000/- per month as tractor driver-cum-agricultural supervisor. The accident occurred due to the negligence of the deceased and there was no fault or mistake on the part of the tipper lorry driver. The owner and insurer of the motor cycle bearing Reg.No.TN36-AA-0189 in which the deceased was riding were not impleaded as parties. Hence, the claim petition is bad for non-jointer of necessary party.

4.The Tribunal, after considering the evidence placed before it, particularly, First Information Report and charge sheet filed against the 1st respondent the driver of the tipper lorry fixed the negligence on the first respondent driver. Since there was no evidence to prove the income of the deceased, the Tribunal has notionally fixed the income of the deceased at Rs.6,500/-, by adding 30% towards future prospects and deducting 1/4th for personal expenditure, fixed the loss of dependency at Rs.10,64,280/- and had awarded additional Rs.1,25,000/- under the other non-conventional heads. In total, a sum of Rs.11,89,280/- has been awarded and the same has been apportioned among the claimants as per the apportionment mentioned in the award.

5.The learned counsel appearing for the appellants submitted that the Tribunal ought to have taken the earning capacity of the deceased at Rs.20,000/- per month instead of fixing it notionally at Rs.6,500/- and the compensation for consortium ought to have been fixed at Rs.1,00,000/- instead of Rs.50,000/-.

6.The learned counsel appearing for the Insurance Company/3rd respondent submitted that the Tribunal has added 30% for future prospects though the claimants are entitled only for 25% since the deceased was above 40 years at the time of accident. Similarly, under the heads of for loss of consortium, loss of funeral expenses and loss of love and affection, the Tribunal has awarded Rs.50,000/- , Rs.25,000/- and Rs.40,000/- respectively whcih are over and above the standard forumal fixed by the Hon'ble Supreme Court in National insurance Company Ltd., v. Pranay Sethi and others reported in (2017 (2) TN MAC 609 (SC))



7. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the 3rd respondent and perused the records.

8. On considering the rival submissions, this Court finds that the income of the deceased has not been proved through any document or independent oral evidence. Though PW-1 has deposed that her deceased husband was working as an agricultural Supervisor under one Marisamy, the said Marisamy was not examined and therefore, the Tribunal has rightly fixed the income of the deceased at Rs.6,500/- notionally to compute the loss of dependency. As pointed out by the learned counsel appearing for the Insurance Company, the Tribunal has added 30% towards future prospects which has now been restricted to 25% by virtue of the Constitutional Bench Judgment in Pranay Sethi case. Therefore, this Court finds that if the current standard formula prescribed by the Hon'ble Constitutional Bench is applied, this Court has to reduce the compensation awarded by the Tribunal under the heads of future prospects, loss of consortium and funeral expenses. This will be detrimental and adverse to the claimants. Since the Insurance Company has not filed any appeal, aggrieved by the quantum of compensation, this Court confirmed the award passed by the Tribunal and dismiss this appeal.

9. In the result, this Civil Miscellaneous Appeal is dismissed. The award passed by the Motor Accident Claims Tribunal (Special District Judge), Erode in M.C.O.P.No.161 of 2015 dated 29.01.2016 is hereby confirmed. No order as to costs.

Sd/-

Assistant Registrar

//True copy//

Sub Assistant Registrar

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To

The Motor Accident Claims Tribunal,
Special District Judge,
Erode.

C.M.A.No.1942 of 2016

RGN (CO)
BE (10/08/2021)