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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2020

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.1899 of 2015

1.S.Sridhar

2.S.Sribhan

....Appellants/Petitioners

Vs

1.Mansuri Ali

2.Bajaj Alliance General Insurance Co. Ltd.,
No.25, College Road,
Nungambakkam,
Chennai 600 006.

...Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 27.01.2015 made in M.C.O.P.No.722 of 2012 on the file of the Motor Accidents Claims Tribunal, II Additional District Court, Thiruvallur at Poonamallee.

For Appellant : Mr.M.Sivakumar

For Respondents : No Appearance for R1
M/s.R.Sreevidhya for R2

J U D G M E N T

(This case has been heard through Video Conferencing)

Heard the learned counsel for the appellant and the learned counsel for the second respondent Insurance Company.

2.The appeal is filed by the claimants for enhancement of compensation.

3. The claim petition is filed seeking Rs.8,00,000/- as compensation for the death of one Lurthu Mary. The petitioners



are the sons of the deceased, who died in the road accident while travelling as a pillion rider in the two wheeler driven by her husband. The accident took place on 25.03.2012, when a tanker lorry hit the two wheeler from behind. In the claim petition, it was stated that the deceased was earning her livelihood by doing tailoring job and earning a sum of Rs.7,500/- per month. She was 35 years old at the time of accident and her sons/appellants herein were depending on her. Though assessed loss at Rs.13,20,000/-, the claim was restricted to Rs.8,00,000/-.

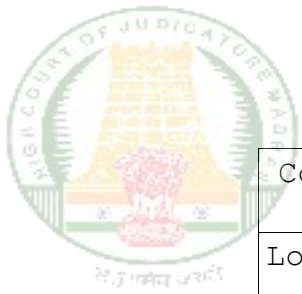
4. Before the Tribunal, two witnesses were examined on behalf of the claimants and 7 exhibits were marked. No witnesses examined on the side of the respondents.

5.The Tribunal notionally fixed the income of the deceased at Rs.6,500/- and after deducting 1/3 for personal expenditure, the monthly contribution of the deceased to the family was assessed as Rs.4,334/-. It has applied the multiplier '16' to arrive the loss of income. After assessing the compensation as Rs.8,58,000/- for both conventional and non conventional damages, the Tribunal has awarded only Rs.8,00,000/- on the ground that the claim has been restricted to Rs8,00,000/-.

6. Pointing out the error in the Tribunal's award for not including the future prospects and applying the multiplier '16' instead of '15' since the deceased fall within the age group of 36 to 40, the learned counsel for the claimants submit that the award of the Tribunal has to be modified in tune with the standardised formula fixed by the Constitution Bench of the Supreme Court.

7. Learned counsel for the respondent Company would submit that the deceased monthly income of Rs.6,500/- fixed notionally is not based by any documentary evidence and therefore, the loss of income has to be duly modified, which would be fair and just compensation.

8.On hearing the rival submissions of counsels and on perusing the records, this Court finds that the date of accident was 25.03.2012. There is no dispute regarding the negligence alleged on the part of the tanker lorry, which is duly insured under the second respondent Company. On the date of accident, the claimant has crossed 36 years as per the family card. The claimants are sons of the deceased Lurthu Mary. As dependents, though they are major but entitled for compensation. Therefore, the award of the Tribunal is modified as below:



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Compensation under Various Heads	Award passed by this Court
Loss of income (6500+2600)X2/3X15X12)	Rs.10,92,000/-
Funeral Expenses	Rs. 40,000/-
Loss of love and affection (2X 20,000)	Rs. 40,000/-
Total	Rs.11,72,000/-

9. The said compensation to be paid by the second respondent with interest at the rate of 7.5% per annum from the date of filing the claim petition (26.04.2012) till the date of realization. The claimants are entitled to apportion the compensation equally and on petition, they are entitled to withdraw the said amount. The Civil Miscellaneous Appeal is disposed of accordingly. No costs.

Sd/-

Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

vri

To

The Motor Accidents Claims Tribunal,
II Additional District Court,
Thiruvallur @ Poonamallee.

Copy To

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

+1cc to M/s.R.Sreevidhya, Advocate SR.No.41233

+1cc to Mr.C.Prabakaran, Advocate SR.No.41149

CMA No.1899 of 2015

CA (CO)
GMY (07/09/2021)