IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3103 of 2013

1. E. Sobana

2. Rajaram

3. Deepika (Minor)
(rep. By mother and next friend,
E. Sobana) .. Appellants/Claimants

Vs.

1. G. Loganathan

2. M/s. Bajaj Allianz General Insurance Co. Ltd.,
No.25/26, Prince Towers, 4th Floor,
College Road, Nungambakkam,
Chennai 6.
..Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 30.09.2009, made in M.C.O.P. No.262 of 2006, on the file of the Additional District Judge, Fast Track Court I, (Motor Accident Claims Tribunal), Poonamallee.

For Appellants : Ms.S.Ramya
for M/s. J. Mahalingam

For Respondents : Mrs. R.Sreevidhya (For R2)

J U D G M E N T

This matter is heard through "Video Conferencing".

This Civil Miscellaneous Appeal has been filed for enhancement of the compensation granted by the Tribunal in the award dated 30.09.2009, made in M.C.O.P. No.262 of 2006, on the file of the Additional District Judge, Fast Track Court I, (Motor Accident Claims Tribunal), Poonamallee.

2.The appellants filed M.C.O.P. No.262 of 2006, on the file of the Additional District Judge, Fast Track Court I, (Motor Accident Claims Tribunal), Poonamallee, claiming a sum of Rs.15,00,000/- as compensation for the death of one Easwaran, who died in the accident that took place on 04.12.2005.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that accident occurred due to rash and negligent riding by the 1st respondent, rider-cum-owner of the Motorcycle and directed the 2nd respondent as insurer of the vehicle to pay a sum of Rs.5,96,904/- as compensation to the appellants.

4.Not being satisfied with the amounts awarded by the award dated 30.09.2009, made in M.C.O.P. No.262 of 2006, the appellants have come out with the present appeal.

5.The learned counsel appearing for the appellants contended that at the time of accident, the deceased was working as a Bearer in Madras Boat Club and was earning a sum of Rs.5,450/- per month. In addition to that, the deceased was running a Juice Stall in League Club and was earning a sum of Rs.5,000/- per month from it. Though the said Juice Stall was registered in the name of his wife/P.W.1, for the sake of formality, the deceased was running the shop and the license of the shop got cancelled after his demise. The appellants examined P.W.1 wife of the deceased and P.W.2 – Accounts Manager in League Club to prove the same. The Tribunal without considering the evidence of P.W.1, P.W.2 and license of Juice Stall, fixed only the sum of Rs.5,450/- per month as his notional income and awarded meagre compensation. The deceased was aged 44 years at the time of accident, as per the evidence of P.W.1, his wife as well as from Ex.P2 – Post Mortem certificate. The Tribunal erroneously fixed the age of the deceased as 45 years and applied the multiplier '13', instead of applying '15' as per II Schedule of the Motor Vehicles Act. The Tribunal failed to award any amount towards medical expenses, loss of estate and pain and suffering. The amounts awarded by the Tribunal towards funeral expenses, transportation charges and loss of consortium are meagre and prayed for enhancement of the compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the appellants failed to prove the avocation and income of the deceased from the alleged Juice Stall in League Club. In the absence of any material evidence to prove the same, the Tribunal rightly fixed a sum of Rs.5,450/- as monthly income and granted compensation, which is not meagre. The Tribunal rightly considering the driving license of the deceased, fixed his age as 45 years. The total compensation awarded by the Tribunal under different heads are not meagre. The appellants have not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

7.Heard the learned counsel appearing for the appellants as well as the 2nd respondent-Insurance Company and perused the materials available on record.

8.From the materials on record, it is seen that it is the contention of the appellants that at the time of accident, the deceased was working as a Bearer in the Madras Boat Club and was earning a sum of Rs.5,450/- per month. In addition to that, the deceased was also running a Juice Stall in League Club and was earning a sum of Rs.5,000/- per month. The appellants examined 1st appellant, wife of the deceased as P.W.1 and P.W.2, Accounts Manager of League Club to prove that the Juice Stall was run by the deceased. The appellants have also marked the approval letter for the Juice Stall and cancellation of approval letter after the demise of the deceased as Exs.P6 and P7. From the evidence of P.W.2 and Exs.P6 and P7, it is clear that the Juice Stall was run by wife of the deceased viz., 1st appellant. P.W.2 also admitted that Ex.P7 license for the Juice Stall is in the name of the 1st appellant and not in the name of the deceased. The Tribunal considering the evidence of P.W.3 who deposed that monthly income of the deceased as per Ex.P8 – salary slip is Rs.5,450/-, fixed the income of the deceased as Rs.5,450/-. The same is in order. The appellants contended that the deceased was aged 44 years at the time of accident. The Tribunal considering Ex.P4 - driving license, rightly fixed the age of the deceased as 45 years, but erroneously applied the multiplier '13'. As per the judgment of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC Supreme Court [Sarla Verma & others vs. Delhi Transport Corporation & another], the correct multiplier applicable is '14'. The Tribunal failed to grant any enhancement towards future prospects. As per the judgment of the Hon'ble Apex Court reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and others], the appellants are entitled to 25% enhancement towards future prospects. There are three dependants of the deceased. Hence, deducting 1/3rd towards personal expenses of the deceased and applying multiplier '14', the amounts awarded by the Tribunal towards loss of dependency is modified to Rs.7,63,000/- {[Rs.5,450/- + Rs.1,362.5/- (25% of Rs.5,450/-)] x 12 x 14 x 2/3}. The Tribunal failed to award any amount towards loss of consortium to the 1st appellant. The 1st appellant, being wife of the deceased is entitled to a sum of Rs.40,000/- towards loss of consortium. The Tribunal has awarded a meagre sum of Rs.10,000/- towards funeral expenses and hence the same is enhanced to Rs.15,000/-. The

Tribunal failed to award any amount towards loss of estate. The appellants are entitled to a sum of Rs.15,000/- towards loss of estate. The amounts granted by the Tribunal under other heads are just and reasonable and hence, the same are confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	5,66,904/-	7,63,000/-	Enhanced
2.	Loss of consortium to 1st appellant	-	40,000/-	Granted
3.	Loss of love and affection to appellants 2 & 3	15,000/-	15,000/-	Confirmed
4.	Funeral expenses	10,000/-	15,000/-	Enhanced
5.	Loss of estate	-	15,000/-	Granted
6.	Transportation	5,000/-	5,000/-	Confirmed
	Total	5,96,904/-	8,53,000/-	Enhanced by Rs.2,56,096/-

9.In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.5,96,904/- is enhanced to Rs.8,53,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd respondent-Insurance Company is directed to deposit the award amount, now determined by this Court, along with interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P. No.262 of 2006. On such deposit, the appellants 1 and 2 are permitted to withdraw their share of the award amount, now determined by this Court, along with proportionate interest and costs, as per the ratio of apportionment fixed by the Tribunal, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. The shares of the minor 3rd appellant is directed to be deposited in any one of the Nationalized Bank, till the minor attains majority. The 1st appellant, mother of the minor 3rd appellant is permitted to withdraw the accrued interest, once in three months for the welfare of the minor 3rd appellant. No costs.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

gsa

To

1. The Additional District Judge,
   Fast Track Court I,
   (Motor Accident Claims Tribunal),
   Poonamallee.

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

+1cc to M/s. J. Mahalingam, Advocate, S.R.No.42890

+1cc to Mrs. R.Sreevidhya, Advocate, S.R.No.42365

C.M.A.No.3103 of 2013

LN(CO)
GMY(25/08/2021)