



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 17.12.2020

Coram::

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

C.M.A.No.207 of 2016

1.Sarojaammal
2.Anjali
3.Minor Velan
S/o late Kumar

4.Minor Vijay
S/o late Kumar

5.Minor Annamalai
S/o kate Kumar
(Minors are rep.by his next friend
and mother Anjali) ... Appellants /Petitioners

/versus/

1.Mr.K.Jagadeesha

2.The Branch Manager,
Reliance General Insurance Company Limited,
570, Naigaum Cross Road,
Next to Royal Industrial Estate,
Wadala (W),
Mumbai 400 031. ... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 30.08.2011 made in M.C.O.P.No.97/2011 on the file of the Motor Accident Claims Tribunal, Sub Judge, Hosur.

For Appellant :Mr.K.Prasanna for
Mr.Mukund R.Pandiyan

For Respondents:No appearance for R1
Mr.S.Arunkumar for R2

JUDGMENT

(The case has been heard through video conference)

Not being satisfied with the quantum of compensation awarded by the Tribunal, seeking enhancement of compensation the present appeal is filed by the claimant.

2.The facts of the case is that on 10.01.2011, when the deceased Kumar came to his in-laws house at Hosur and returning back to Bangalore, on the National Highways Road near Zuzuwadi check post, an Eicher lorry bearing Reg.No.KA- 52-4748 came rash and negligently and dashed against him. The deceased sustained sever injury on all over his body and his vital organs were damaged. He was shifted to Victoria Hospital, Bangalore for special treatment. However, he succumbed to the injury on 16.01.2011. Claiming that he was earning around Rs.9,000/- per month as mason, his mother, wife and three minor children have filed the claim petition seeking a sum of Rs.10,00,000/- as compensation.

3.The Tribunal, on considering the evidence placed before it, awarded a sum of Rs.5,21,000/- with interest at the rate of 9% p.a which shall be apportioned among the claimants.

4.The learned counsel for the appellants had pointed out that the Tribunal erred in fixing Rs.3,000/- as notional income of the deceased, who was 28 years old at the time of accident and earning livelihood as a mason with income of Rs.9,000/- per month. Further, the Tribunal not even taken note of the future prospects. The learned counsel submitted that the deceased left behind his wife and three minor children, who all were solely depending on the deceased. This fact has not been considered in right perspective by the Tribunal to award adequate compensation for the loss of love and affection and loss of consortium. Hence, sought for interference.

5.The learned counsel for the Insurance Company submitted that the Tribunal has fixed monthly income of Rs.3,000/- notionally, in view of the fact that the claimants were not able to produce any document to show the avocation of the deceased or skill to earn. Therefore, the Tribunal has fixed the income of Rs.100/- per day and arrived at Rs.3,000/- per month. As far as the other heads are concerned, the learned counsel submitted that the standardised formula drawn by the Hon'ble Supreme Court in the Catena of judgments may be followed to award fair and adequate compensation under the non-conventional heads.

6. After considering the rival submissions, this Court is of the view that the accident has taken place on 10.01.2011. The injured died on 16.01.2011 at Victoria Hospital, Bangalore. There is no documentary evidence to prove the income of the deceased. However, from the evidence of PW-1, the Tribunal has accepted that the deceased was earning his livelihood as mason and notionally fixed his income as Rs.100/- per day. Taking note of the fact that during the year 2011, the mason at Bangalore might have earned atleast Rs.150/- per day. It is fair to fix the notional income at Rs.5,000/- per month and add 40% future prospects. While so, the notional income of the deceased with future prospects shall be Rs.7,000/- i.e. (Rs.5000 + 40% (Rs.2000/-)). Out of which, he should have spent 1/4th for his personal expense and the rest of the money spent for his other four family members. At the time of his death, the deceased was 28 years old. Therefore, multiplier '17' is applied to compute the loss of income to the dependants. Accordingly, a sum of Rs.10,71,000/- is awarded for loss of income and compensation under other non-conventional head paid as per the guidelines of the Hon'ble Supreme Court.

7. The break up details of the award is below:-

Sl No	Particulars	Award of the Tribunal (Rs.)	Modified award of this Court (Rs.)	Enhanced/ Reduced/ Confirmed/
1.	Loss of income	4,86,000-00	10,71,000-00 (Rs.5000+40%- 1/4x12x17)	Enhanced
2.	Loss of consortium to the 2 nd appellant	10,000-00	40,000-00	Enhanced
3.	Loss of love and affection to appellants 1, 3, 4 and 5	20,000-00	80,000-00 (20,000x4)	Enhanced
4.	Funeral expenses	5,000-00	15,000-00	Enhanced
5.	Loss of estate	----	15,000-00	Awarded
	Total	5,21,000-00	12,21,000-00	Enhanced

8. The award of the Tribunal is accordingly enhanced from Rs.5,21,000-00 to Rs.12,21,000-00 with interest at the rate of Rs.7.5% p.a from the date of petition till the date of realisation.

9.The award of this Court is apportioned as below
1st appellant/mother Rs.2,21,000-00

2nd appellant/wife Rs.5,50,000-00

3 to 5 Minor appellants/
children Rs.1,50,000-00 each

10.The 2nd respondent/Insurance Company is directed to deposit the enhanced award amount with interest, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the appellants 1 and 2 /claimants 1 and 2 are permitted to withdraw their respective share amount with proportionate interest, less the amount already withdrawn by them, if any, on filing appropriate petition before the Tribunal. The share amounts of the minor claimants/appellants 3 to 5 shall be deposited into the Nationalised Bank till the minors attain majority. The interest accrued on the deposited amount of the minor claimants/appellants 3 to 5 shall be withdrawn by the 2nd appellant/mother of the minor claimants once in every six months and the same shall be spent for the welfare of the children.

11.In the result, this Civil Miscellaneous Appeal is partly allowed. No order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To:-

1.The Motor Accident Claims Tribunal,
Sub Judge, Hosur.

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

+1cc to Mr.S.Arunkumar, Advocate Sr.42011
+1cc to Mr.Mukund R.Pandiyar, Advocate SR.42019

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