IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.2217 of 2016

1.B.Malarkodi
2.B.Gowtham (minor)
rep.by his mother and next friend
the 1st petitioner
3.M.Jagatha
4.J.Mohan ... Appellants/Petitioners

Vs.

1.V.Soundarapandian

2.ICICI Lombard General Insurance Co., Limited,
Chotabhai Centre, 2nd & 3rd Floors,
140, Nungambakkam High Road, Chennai - 34.

3.Metropolitan Transport Corporation,
(Chennai Division) Ltd., rep by its
Managing Director, Pallavan Salai,
Chennai - 2. ... Respondents/Respondents
(3rd respondent is given up)

Prayer: This Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 28.01.2016 passed in M.C.O.P.No.5594 of 2011 on the file of the Chief Court of Small Causes (Motor Accidents Claims Tribunal) Chennai.

For Appellants : Mr.T.Kalai Arasan

For Respondents: R1 died,
Mrs.R.Sreevidhya for R2
Mr.S.S.Swaminathan for R3

J U D G M E N T

The quantum of compensation of Rs.30,21,160/- awarded by the Motor Accident Claims Tribunal is sought to be enhanced in the present appeal.

2. The claimants are the appellants before this Court. The claim petition was filed by the legal heirs of the deceased victim and the accident occurred on 16.11.2011 at about 22.10 hours at Maduvankarai Bridge, Near Corporation Community Hall, Sakarabani Road, Guindy, Chennai-32. The Guindy traffic investigation registered a case in Crime No.482/S1/2011. On account of the accident, the deceased sustained multiple injuries and died. The claim petition was filed seeking compensation of Rs.47,00,000/-.

3.It is not in dispute that the deceased victim was serving as a driver in the Alandur Municipality and drawing the salary of Rs.16,474/- per month. The first petitioner in the claim petition is the wife, the second petitioner is a minor son and the petitioners 3 and 4 are the parents of the deceased. The first respondent is the owner of the vehicle, the second respondent is the insurer of the van and the third respondent is the owner of the bus and therefore, all these persons were impleaded as respondents. The Tribunal adjudicated the issues and arrived at a conclusion that the accident occurred due to rash and negligent driving of the driver of the Eicher van bearing Registration No.TN-02-D-7490. Therefore, the first respondent, who is the owner of the van, is liable to pay compensation to the petitioners. The second respondent, being an insurer of the Eicher van, is liable to indemnify the first respondent and accordingly, the Tribunal arrived at a conclusion that the Insurance Company is liable to pay compensation to the claimants.

4. The evidence of P.W.3 establishes that the deceased was employed as a driver in the Alandur Municipality and he was drawing monthly salary of Rs.16,474/-. He was aged about 37 years at the time of accident and he was appointed as a driver on 20.9.2007 and his retirement is due on 30.04.2023. To establish the same Ex.P.11 pay certificate issued by the Pay Disbursing Officer was produced and the said pay certificate was not disputed by the Insurance Company.

5.The learned counsel appearing on behalf of the appellants mainly contended that the Tribunal committed an error in quantifying the compensation with reference to grant of future prospects. When, it is an admitted fact that the deceased was employed as a driver and drawing monthly salary of Rs.16,474/- per month, then the Tribunal ought to have granted future prospects treating the employment as a Government service. The Municipality is a local authority coming under the department of Municipal Administration and therefore, the services of the deceased is to be treated as Government service, for the purpose of fixing the compensation and for grant of future loss of income. However, the Tribunal has not considered the said aspect and erroneously calculated the compensation and therefore, the present appeal is filed.

6.The learned counsel appearing on behalf of the 2nd respondent/Insurance Company did not dispute the fact regarding the employment of the deceased even before the Tribunal. The documents placed before the Tribunal reveal that the deceased was employed as a driver in the Alandur Municipality. Now, the learned counsel for the 2nd respondent/Insurance Company cannot go away from such evidence, which is otherwise proceeded.

7. In view of the fact that the future loss of income has not been adequately considered and granted, this Court is inclined to enhance the compensation as detailed here under :

In respect of loss of income the monthly salary of Rs.16,474/- is taken into account, 50% of the salary is to be added towards future prospects and accordingly, the claimants are entitled for a sum of Rs.24,711/- out of which, 1/4th amount is to be deducted as personal expenses. Accordingly, a sum of Rs.18,533/- is to be fixed for calculating the loss of income. Thus, the amount is to be calculated as Rs.18,533 x 12 x 15 =Rs.33,35,940/-. However, Rs.50,000/- was granted towards love and affection and it is brought to the notice of this Court that one year old child is there and parents are also living along with the family. This being the factum, the said amount is to be enhanced to Rs.1,00,000/-. The amount of Rs.50,000/- granted for loss of consortium is modified as Rs.40,000/-. Funeral expenses is also reduced to Rs.15,000/-. Loss of estate is enhanced to Rs.15,000/-. Thus, the total compensation payable to the appellants/claimants is Rs.35,05,940/-.

Sl.No.	Heads	Amount in Rs.
1.	Loss of Income (Rs.18,533x12x15)	33,35,940
2.	Love and affection	1,00,000
3.	Loss of consortium	40,000
4.	Funeral Expenses	15,000
5.	Loss of Estate	15,000
	Total	35,05,940

8. It is brought to the notice of this Court that the compensation awarded by the Tribunal had already been deposited by the Insurance Company and the claimants have also withdrawn the same, except the minor's share. Thus, the 2nd respondent/Insurance Company is directed to deposit the enhanced compensation along with interest at the rate of 7.5% per annum within a period of six weeks from the date of receipt a copy of this judgement. On such deposit, the claimants are permitted to withdraw the entire amount by filing an appropriate application and as per the apportionment granted by the Tribunal, the minor's share is to be deposited in any one of the Nationalized Bank in interest bearing fixed deposit scheme.

9. Accordingly, the Civil Miscellaneous Appeal is allowed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Chief Judge,
Small Causes Court,
(Motor Accidents Claims Tribunal),
Chennai.

Copy to

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

+1cc to M/s.N.M.Muthurajan, Advocate Sr.20605
+1cc to Mrs.R.Sree Vidhya, Advocate Sr.21220
+1cc to Mr.S.S.Swaminathan, Advocate Sr.20115

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