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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.09.2020

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.2075 of 2018

T.C. Mathews (Died)

Saramma Mathews

... Appellants/Petitioners

Vs

1.C. Natarajan

2.M/s. United India Insurance Co., Ltd.,
No.38, Anna Salai, Chennai - 2.

... Respondents/Respondents

Appeal under Section 173 of the Motor Vehicles Act against the judgment and decree dated 05.11.2007 made in M.C.O.P.No.2281 of 2006 on the file of the Motor Accidents Claims Tribunal, (Chief Small Causes Court) Chennai.

For Appellant : Mr. V.T.Narendran

For Respondents : Mr. P. Shankaranarayanan
for R2

R1 : Set Exparte

J U D G M E N T

This appeal has been preferred by the claimants against the judgment and decree dated 05.11.2007 made in M.C.O.P.No.2281 of 2006 on the file of the Motor Accidents Claims Tribunal, (Chief Small Causes Court) Chennai.

2.The facts of the case would run thus:

On 09.03.2005 at about 05.00 p.m., the deceased Suneesh Mathews was travelling in a two-wheeler bearing Reg.No.TN-02-T-1464 from Kerala towards Chennai. When the two-wheeler reached near Solur at Coimbatore, the lorry bearing Reg.No.TAN 367 came in a rash and negligent manner at high speed and hit the two-wheeler, as a result of which the deceased died on the spot. The appellants, who are the legal heirs of the deceased, filed a



claim petition before the Tribunal, claiming a sum of Rs.10,00,000/- as compensation. Considering the materials and evidence available on record, the Tribunal has awarded a sum of Rs.2,95,000/- with interest at the rate of 7.5% per annum from the date of petition. Challenging the same, the present appeal has been filed by the claimants, seeking enhancement of compensation. After filing the appeal, the first claimant, namely, T.C.Mathews, died, leaving his wife as the only legal representative. Hence a petition was filed to accept the revised cause title before this Court and the same was ordered on 16.02.2017.

3.The learned counsel for the appellant has submitted that the Tribunal has fixed 50% contributory negligence on the part of the deceased, without any basis. The Tribunal ought to have fixed the entire negligence on the part of the first respondent lorry driver when there is no contra evidence available to show that the deceased was at fault. It is further submitted that the compensation awarded by the Tribunal is on the lower side and hence, the same requires substantial enhancement.

4.Per contra, the learned counsel appearing for the second respondent Insurance Company has submitted that the Tribunal, after considering the materials and evidence available on record in proper perspective, has awarded the compensation, which is just, fair and reasonable and hence the same need not be interfered with by this Court.

5.With regard to contributory negligence, it remains to be stated that FIR has been lodged by a third party. The Tribunal has given a finding that P.W.2-Suresh, who claimed to have seen the accident, had not witnessed the occurrence and that on realising the negligence attributed to the deceased in the FIR, the claimants have examined him as if he had seen the accident. The Tribunal has given a further finding that from the position of the vehicles shown in the sketch, it could be easily inferred that the motorcyclist had crossed the middle line and came to the southern part of the road and dashed against the lorry, which was proceeding from East to West direction. In the circumstances, the Tribunal fixed the contributory negligence on the part of the deceased and the lorry driver, equally at 50:50. This Court is not inclined to interfere with such factual findings arrived at by the Tribunal.

6.Coming to compensation part, the following are the details of compensation awarded by the Tribunal:

HEADS	AMOUNT (Rs.)
Loss of income	5,40,000/-
Loss of love and affection	20,000/-



Loss of expectation of life and loss to estate	25,000/-
Funeral expenses	5,000/-

TOTAL.....	5,90,000/-
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Out of the above sum of Rs.5,90,000/-, 50% amount has been deducted towards contributory negligence and accordingly, the Insurance Company was directed to deposit a sum of Rs.2,95,000/- with interest at the rate of 7.5% per annum from the date of petition.

7. With regard to loss of income, taking note of the materials and evidence, the Tribunal has fixed the monthly contribution of the deceased to the family at Rs.4,500/-, arrived at the annual contribution at Rs.54,000/- and thereafter adopted the multiplier of 10 and arrived at the loss of income at Rs.5,40,000/-.

8. Taking note of the age and avocation of the deceased, this Court deems it fit to fix the monthly contribution of the deceased to his family at Rs.5,000/- and to add 50% of the amount towards future prospects. The deceased was aged 22 years at the time of accident. Adopting the multiplier of 18 would be proper for the age group between 21 to 25 years old, in the light of the decision of the Hon'ble Supreme Court in the case of Sarla Verma and others Vs. Delhi Transport Corporation and another reported in 2009 ACJ 1298 SC. If that is done and 50% amount is deducted towards personal expenses of the deceased, the loss of income works out to Rs.8,10,000/- ([Rs.5,000/- + Rs.2,500/- FP] x 12 x 18 - 50%), and accordingly it is modified. Further, it would be appropriate to enhance the amounts awarded by the Tribunal towards loss of expectation of life and loss to estate to Rs.40,000/- and towards loss of love and affection to 25,000/-. The details of the modified compensation are as under:

HEADS	AMOUNT (Rs.)
Loss of income	8,10,000/-
Loss of love and affection	25,000/-
Loss of expectation of life and loss to estate	40,000/-
Funeral expenses	5,000/-
TOTAL.....	8,80,000/-

Since 50% contributory negligence has been fixed on the part of the deceased, the claimant is entitled to the modified



compensation of Rs.4,40,000/- with interest at the rate of 7.5% per annum from the date of petition. It is made clear that the appellant/claimant is not entitled for interest for the period of delay in filing the appeal, only in respect of the enhanced amount of compensation.

9. Accordingly, the Civil Miscellaneous Appeal is allowed in part. No costs. The second respondent Insurance Company is directed to deposit the modified compensation amount as ordered above, after deducting the amount, if any, already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the appellant / claimant is permitted to withdraw the entire amount, on making proper application before the Tribunal.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

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

Copy to:
The Section Officer,
VR Section, Madras High Court.

+1cc to Mr.P.Sankaranarayanan, Advocate, S.R.No.31031
+1cc to Mr.K.Varadha Kamaraj, Advocate, S.R.No.30918

C.M.A.No.2075 of 2018

SSD(CO)
CB(31/08/2021)