IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.11.2020

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

C.M.A.No. 3184 of 2019

1. Mythili
   W/o. Late Munusamy

2. Minor Saranya
   D/o. Late Munusamy

3. Minor Suganya,
   D/o. Late Munusamy

(minor petitioners 2 and 3 are represented by their mother/ guardian 1st appellant viz., Mythili)

All are residing at
No.22, Mettu Street Main Road,
Chennai-600 066.
Now residing at Arni Main Road,
Adukkamparai, Vellore-11. ...Appellants

Vs.

S.Perumal (died)

1. United India Insurance Company Ltd.,
   rep. By its Divisional Manager,
   3rd Party Claims HUB, 2nd Floor,
   No.81, Katpadi Road,
   Vellore-4.

2. Smt. Valli,
   W/o. Late Perumal

3. Minor Vignesh,
   S/o. Late Perumal

4. Minor Prabhukanna
   S/o. Late Perumal

5. Sukkiri

6. Kaliyammal,
W/o. Sukkiri,

(Minors represented by their mother/ guardian 2nd respondent viz., Smt.Valli)
All are residing at
No.19/33, S.V.Mills Colony,
Kathivedu,
Chennai-600 066. ...Respondents

PRAYER:- Civil Miscellaneous Appeal preferred under Section 173 of Motor Vehicles Act against the judgment and decree in M.C.O.P. No.13 of 2015, dated 09.10.2018 on the file of the Motor Accident Claims Tribunal, I Additional District and Sessions Court, Vellore.

For Appellants	:	Mr.M.Sivakumar
For Respondents	:	Mrs.R.Rathnathara for R1 R2 to 6 - dispensed with

J U D G M E N T

The claimants, not being satisfied with the quantum of compensation awarded by the Motor Accidents Claims Tribunal, I Additional District and Sessions Judge, Vellore in MCOP No.13 of 2015, have filed the present Civil Miscellaneous Appeal before this Court.

2. This is a case of fatal accident. The deceased by name Munusamy, was husband of 1st appellant and father of 2nd and 3rd appellants. According to appellants/claimants, on 08.06.2014 at about 07.30 p.m. when the deceased walking along Sembium Kadirvedu Road, on the extreme left side of the road, an autorikshaw bearing Regn. No.TN-03 C-6908 owned by the 1st respondent driven by its driver, came in a rash and negligent manner and dashed against the deceased, in which the deceased sustained multiple injuries. Immediately, he was taken to Stanley Medical College and Hospital, Chennai, however, on the way, he died. At the time of accident, the deceased was working as a painter and also a carpenter, earned monthly income of Rs.18,000/- per month. He was the sole bread-winner of the family. Due to his death, the entire family was left with no means. In the said circumstances, the appellants have filed a claim petition claiming compensation of Rs.25 lakhs.

3. The 1st respondent/owner of the vehicle died. Hence, his legal heirs are impleaded respondents 2 to 6. The owners of vehicle remained exparte and the Insurance Company contested the claim petition on the ground that the accident has been taken place only due to the negligence of deceased and there is no proof that he was earning Rs.18,000/- per month. Hence, the compensation claimed by the appellants are highly excessive.

4. In order to prove their claim, the Appellants/claimants examined the 1st appellant as P.W.1, an eye-witness was examined as P.W.2, and marked as many as 9 exhibits. On the side of the respondents, one witness was examined as R.W.1, and marked as many as 6 exhibits.

5. The Tribunal, after considering the materials available on record, has come to a conclusion that the accident has been taken place due to the rash and negligent driving of driver of the autorikshaw. At the time of accident, the driver of autorikshaw did not possess valid driving license, which is in violation of insurance policy conditions. Hence, the Tribunal had fixed the liability on the owner of Autorikshaw, however, it is only violation of insurance policy condition, the insurance company is directed to pay the compensation and recover the same from the owner of auto. So far as the quantum of compensation is concerned, the Tribunal had fixed the monthly income of the deceased as Rs.6000/-. At the time of accident, as the deceased was 38 years old, 40% of notional monthly income was added for his future prospects, after deducting 1/3rd towards personal expenses, arrived a notional monthly income as Rs.5,600/- and applied the multiplier of 15. In total, the loss of dependency was arrived at Rs.10,08,000/-. That apart, towards loss of love and affection, a sum of Rs.50,000/- was awarded by the Tribunal. Accordingly, the Tribunal has awarded a total compensation of Rs.11,18,000/- under various heads, which reads as follows: -

Sl. No	Headings	Amount Rs
1	Loss of income	10,08,000
2	Loss of love and affection	50,000
3	Loss of consortium	40,000
4	Funeral expenses	15,000
5	Transport expenses	5,000
	Total	11,18,000

Being not satisfied with the award of compensation, the appellants have filed the present appeal.

6. I have heard the rival submissions of learned counsel appearing for appellant and 2nd respondent and perused the records.

7. So far as the quantum of compensation is concerned, the deceased said to have worked as a Painter, apart from that, he was also doing carpentry work and the accident has been taken place in the year 2013. As a painter, he can easily earn a sum of Rs.500/- per day, even assuming that he is working as 20 days per month, he would get a sum of Rs.10,000/- as his monthly income. However, the Tribunal had only fixed the monthly income as Rs.6000/- taking his daily wages as Rs.200/-. Hence, this Court is of the considered view that it is very low and fixed the monthly income of deceased as Rs.10,000/-. On considering the fact that the deceased was below 40 years, as per the dictum laid down by the Hon'ble Supreme Court in the case of National Insurance CO.Ltd., /vs/ Pranay Sethi and others reported in 2017 (16) SCC 680, 40% of annual income has to be added as future prospects. As there are three claimants, 1/3rd should be deducted towards his personal expenses. Hence, the notional monthly income of deceased would be Rs.9500/- and applying multiplier of 15, the loss of dependency comes to Rs.17,10,000/-. That apart, in respect of other heads, the Tribunal has rightly awarded the compensation and this court is not inclined to interfere with the same. In the said circumstances, the award passed by the Tribunal is modified as follows :-

Sl. No.	Headings	Amount Awarded by the Tribunal Rs.	Amount awarded by this Court	Award confirmed or enhanced
1	Loss of income	10,08,000	17,10,000	enhanced
2	Loss of love and affection	50,000	50,000	confirmed
3	Loss of consortium	40,000	40,000	confirmed
4	Funeral expenses	15,000	15,000	confirmed
5	Transport expenses	5,000	5,000	confirmed
	Total	11,18,000	18,20,000	enhanced

Thus, the appellants are entitled to get a sum of Rs.18,20,000/- instead of Rs.11,18,000/- as awarded by the Tribunal.

8. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.11,18,000/- is hereby enhanced to Rs.18,20,000/- together with interest at the rate of 7.5% per annum from the date of

petition till the date of deposit. The appellants are directed to pay necessary Court fee, if any, on the enhanced compensation. The 1st respondent/Insurance Company is directed to deposit the enhanced award amount now determined by this Court along with interest, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants are entitled to share the amount proportionately as ordered by the Tribunal and the appellants are permitted to withdraw the enhanced award amount along with interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accidents Claims Tribunal,
I Additional District and Sessions Court, Vellore.

+1cc to Mr.C.Prabakaran, Advocate, sR35928

C.M.A.No.3184 of 2019

CO(RR)
BDL/20/01/2021