IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 18.11.2020
CORAM
THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
C.M.A.No.457 of 2016

1.Vaijayanthi
2.Ranganathan
3.Gobinathan
4.Krishnamurthi
5.Suthakar .. Appellants/Claimants

/versus/

1. P.C.Raghu
S/o.Chinnakannu

2. National Insurance Company Ltd.,
II Floor, Maruthi Complex
F-215, Omalur Main Road
Salem - 4. .. Respondents/Respondents

[1st respondent was set exparte in Tribunal, hence notice may be dispensed with]

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to enhance the award as Rs.15,00,000/- against the award of Rs.5,22,000/- passed in M.C.O.P.No.104/2014 by the learned Special Judge, Motor Accident Claim Tribunal, Salem on 22.07.2015.

For Appellants : No appearance

For Respondents : Mr.J.Chandran [R2]
R1 - Exparte before the TRibunal

J U D G M E N T
(The case has been heard through Video Conferencing)

At the instance of the learned counsel for the appellants, the matter has been adjourned on several occasions. Today, there was no representation for the appellants. Counsel for the second respondent/Insurance company is present.

2. The appeal has been preferred for enhancement of compensation awarded by the Tribunal. The affidavit filed in support of this case would state that at the time of accident,

the deceased was in service and this was evidenced through the service register Ext.X3, which came to be marked during the deposition of P.W.3, who is an employee of Salem Corporation. The appellant also contend that the computation of loss of income has not been properly arrived at by the Tribunal and the compensation awarded under other heads are also very less. It is also contended that the deduction of 1/3rd of his salary towards the personal expenditure and it ought to have only 1/4th when there are five dependants on the deceased.

3. The brief facts of the case is that on 08.12.2013 at about 3.40 p.m., while the deceased Sundaram was standing near Deva Kalyana Mandapam to cross the road on the left side of Seelanaikenpatti Bye-pass Road, running East to West direction. Then, a Maruti Swift car bearing Registration No.TN-23-AK-2333 owned by the first respondent, driven in rash and negligent manner by its driver dashed against Sundaram causing severe bodily injuries. He was taken to the Government Hospital, Salem, and treated for his injuries as in-patient, but in vain. He succumbed to death on 18.12.2013. The claimants who are the wife and children of the deceased Sundaram have filed a claim petition seeking compensation for a sum of Rs.30,00,000/-, against which, the Tribunal has awarded a sum of Rs.5,22,000/- with interest at the rate of 7.5%.

4. The Tribunal after considering the evidence placed before it, had concluded that at the time of accident, Sundaram has retired from his service as unskilled staff of Salem Corporation, and his probable monthly pension would be around Rs.4,380/-. Taking into account the age of the deceased as 59 years, it has tentatively fixed the daily income of the deceased at Rs.200/- per day and calculated his monthly income as Rs.6,000/- [Rs.200x30] and after deducting 1/3rd towards his personal expenses, the Tribunal determined his annual contribution to the family as Rs.48,000/- [Rs.4000 x12]. On applying the multiplier 9, it awarded Rs.4,32,000/- [Rs.48,000 x9] towards loss of income; Rs.25,000/- for funeral expenses; Rs.25,000/- for loss of consortium; and Rs.40,000/- for loss of love and affection.

5. The learned counsel appearing for the Insurance Company submitted that the Tribunal upon relying on the service records, has determined the age of the deceased as 59 years at the time of accident and held that he should have been retired from his service on attaining the age of 58 years. Therefore, the notional income of Rs.200/- per day was rightly fixed by the Tribunal while computing the loss of earning capacity of the deceased and it had arrived the quantum of compensation as per the prevailing standard.

6. Heard the learned counsel for the second respondent-Insurance Company and perused the records.

7. Taking note of the entries in the service register of the deceased which came to be marked as Ext.X3 by P.W.3, the Superintendent of Salem Corporation, the Tribunal has fixed the age of the deceased, based on the date of birth shown in the service register and presumed that on the date of accident, the victim ought to have retired from service. This presumption is contrary to the evidence given by P.W.3, who has categorically asserted that at the time of accident, the deceased was in service and his pay certificate for the month of November 2013 is marked as Ext.X2. P.W.3, in his deposition has deposed that the deceased would attain superannuation only on 31.10.2015

8. Considering the grounds raised in the appeal and the submissions made by the learned counsel appearing for the second respondent, this Court finds that the computation of loss of income of the deceased arrived by the Tribunal is erroneous and it is contrary to the evidences produced before it and hence, it requires interference.

9. From the service records, it is asserted that on the date of death, the deceased Sundaram had completed 58 years. As per the pay certificate for the moth of November '2013 [Ext.X2], his take home salary was Rs.14,950/-, which includes other perks such as house rent allowance, city compensation allowance and medical allowance etc., The Tribunal has presumed that the deceased is a retired person and fixed Rs.200/- as his daily income. On the contrary, we find that at the time of accident, the deceased was still in service and was due to retire within two years. It is also evident from the deposition of P.W.3 that the service of the deceased was regularised only in the year 2006 and he would have not attained the required eligible service for pension. Thus, from the given facts and Ext.X2, pay certificate is taken into consideration, it is necessary to apply split multiplier method and what would be compensated applying the multiplier, based on Ext.X2, would only be for a period of two years at the most. However, for the remaining period as per the multiplier, only notional income would be taken into account, since there is no evidence to show that the deceased had no alternate income other than his salary. Further, the number of dependants of the deceased is 5. The personal expenditure of the deceased has to be fixed as 1/4th of his income.

10. In the said background of facts and circumstances, the loss of income to the family of the deceased Sundaram due to his demise is assessed by applying split multiplier. Accordingly, the take home salary of the deceased being Rs.14,950/- (rounded

off to Rs.15,000/-), after deducting 1/4th towards his personal expenses, it comes to Rs.11,250/- and calculating it for a period of 23 months, the amount would be Rs.2,58,750/- [Rs.11,250 x23] . In addition, the notional income of the deceased after retirement fixed at Rs.6,000/- and after deducting 1/4th towards his personal expenses, it comes to Rs.4,500/-. The multiplier '7' has to be applied for the computation of loss of income after his superannuation at the age of 60 years. Hence, the loss of income after retirement is Rs.3,78,000/- [Rs.4,500 x12 x7]. Rs.15,000/- towards funeral expenses; Rs.40,000/- for loss of consortium for the first claimant; and Rs.80,000/- for loss of love and affection for his children (claimants 2 to 5) granted under non-conventional heads.

11. Thus, the award of the Tribunal is modified and enhanced as below:

Sl. No.	Particulars	Award amount of the Tribunal (Rs.)	Modified award of this Court (Rs.)	Confirmed/ Enhanced/ Reduced/
1.	Loss of income	4,32,000-00	2,58,750-00 (+) 3,78,000-00 ========== 6,36,750-00 ==========	Enhanced
2.	Loss of consortium to first claimant	25,000-00	40,000-00	Enhanced
3.	Loss of love and affection to claimants 2 to 5	40,000-00 (Rs.10,000 x 4)	80,000-00 (Rs.20,000 x 4)	Enhanced
4.	Funeral expenses	25,000-00	15,000-00	Reduced
	Total	5,22,000-00	7,71,750-00	Enhanced

12.The award of the Tribunal is enhanced from Rs.5,22,000-00 to Rs.7,71,750-00. The claimants/respondents 1 to 5 are entitled to Rs7,71,750-00 as compensation with interest at the rate of 7.5% p.a from the date of petition till the date of realisation. The award amount shall be apportioned to the claimants 1 to 5 as below :

Ist Claimant : Rs.5,31,750/- along with proportionate interest.

2 to 5 Claimants : Rs.60,000/- each (Rs.2,40,000/-) along with proportionate interest

13. The second respondent is directed to deposit the enhanced award money, less the amount already deposited, if any, within a period of six weeks from the date of receipt of this order. The claimants 1 to 5/appellants 1 to 5 are permitted to withdraw their respective share amount, on filing appropriate application before the Tribunal.

14. With this modification, this Civil Miscellaneous Appeal is partly allowed. No order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To:

The Special Judge,
Motor Accident Claim Tribunal,
Salem.

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

C.M.A.No.457 of 2016

NR(CO)
CSR 27.04.2021