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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2020

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

C.M.A.No.2150 of 2019

1. Veeran

2. Vasudevan ... Appellants/ Petitioners

Vs.

1. A. Bhuvaneshwari

2. Oriental Insurance Company Ltd.,
Motor Tphub,
Oriental House, Second floor,
No.115, Broadway,
Chennai 600 108.

3. Balakrishnan

4. The New India Assurance Company Ltd.,
Micro Office,
Cuddalore Road,
Vridhachalam

... Respondents/ Respondents

PRAYER:- Civil Miscellaneous Appeal preferred under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 09.01.2019 made in MCOP.No.184 of 2017 on the file of the Motor Accident Claims Tribunal, III Additional District and Sessions Judge, Vridhachalam .

For Appellant : Mr. S. Udhayakumar

For Respondents : Mr. J. Chandran,
for R2



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: Mr. R. Sivakumar,
for R4
For R1 and R3 : No Appearance

J U D G M E N T

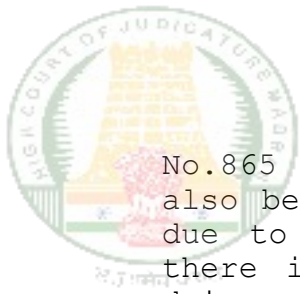
Feeling unsatisfied with the quantum of compensation awarded by the Motor Accidents Claims Tribunal, III Additional District and Sessions Court, Vridhachalam, in MCOP No.184 of 2017, dated 09.01.2019, the claimant is before this Court with this appeal seeking enhancement of compensation.

2. The case of the claimant in brief reads as follows:-

The deceased one Kolanji, is the mother of the first appellant/claimant. On 08.12.2016, while nine persons were traveling in the car belonging to the 3rd respondent, which was insured with the 4th respondent, towards Tirupathi, at about 11.30 p.m., at Edapalayam Road Junction, a lorry bearing registration No.TNF 9936, belonging to the first respondent, which was insured with the second respondent came in a rash and negligent manner and dashed against the car, and all 7 persons died, including the mother of the first appellant and mother-in-law of the second appellant. According to the appellants, the deceased Kolanji was working as a cook and earning a sum of Rs.12,000/- per month. Hence, claiming a compensation of Rs.25 lakhs, the claim petition has been filed.

3. The first respondent, who is the driver of the offending lorry, remained exparte and the second respondent, Insurance Company contested the claim petition on the ground that even though the offending lorry was insured with this respondent at the time of accident, the driver of the lorry has no valid licence to drive the vehicle. The accident has taken place only due to the negligent act of the driver of the car and hence, Insurance Company is not liable to pay the compensation, and the 3rd and 4th respondents are only liable to pay the compensation. It is also stated that the compensation claimed by the claimants is very high and speculative.

4. The 3rd respondent, driver of the car, remained exparte and the 4th respondent Insurance Company has contested the claim petition on the ground that the 3rd respondent, who has driven the vehicle at the time of accident was not having proper license and the car was also not insured with this respondent at the relevant time. The accident has taken place only due to the negligence of the driver of the lorry and a case in Crime



No.865 of 2016 under Sections 279, 337 and 304(A) of IPC, has also been registered against him. The accident has taken place due to the negligent driving of the driver of the lorry and there is no negligence on the part of the first respondent, driver of the car and ultimately, the respondents 3 and 4 are not liable to pay the compensation and they have also disputed the income of the deceased.

5. In order to prove the claim, the claimants examined three witnesses and marked as many as 12 documents. On the side of the respondents, neither any witness has been examined nor any documents have been marked.

6. The Tribunal, after considering the materials available on records, came to a conclusion that the accident has taken place due to the rash and negligent driving of the driver of the lorry and the respondents 1 and 2 are liable to pay the compensation to the first claimant, who is the son of the deceased Kolanji. So far as the quantum of compensation is concerned, the age of the deceased Kolanji was fixed at 47 based on the Adhar Card and a sum of Rs.8000/- was taken as monthly income and adding 25% for his future prospects, the Tribunal arrived at a notional monthly income of the deceased at Rs.10,000/-(8000+2000) and after deducting 50% towards his personal expenses and also applying a multiplier of 13, a sum of Rs.7,80,000/-(5000 x 12 x 13) was awarded towards loss of dependency. and the Tribunal also awarded compensation under various heads as follows :-

Sl. No.	Headings	Amount awarded by the Tribunal Rs.
1	Loss of dependency	Rs.7,80,000/-
2	Loss of Love and Affection	Rs.40,000/-
3	Loss of estate	Rs.15,000/-
4	Funeral expenses	Rs.15,000/-
5	Transportation expenses	Rs. 5,000/-
	Total	Rs.8,55,000/-

The Tribunal dismissed the claim petition as against the 2nd claimant since he is son-in-law of the deceased. Feeling not satisfied with the same, the claimants are before this Court with this Appeal.

7. Heard both sides and perused the materials available on records carefully.



8. The learned counsel appearing for the appellants would submit that the deceased was working as a cook and earning a sum of Rs.12,000/- per month. However, the Tribunal fixed the monthly salary of the deceased at Rs.8000/-. That apart, as per law laid down by the Hon'ble Supreme Court in Pranay Sethi's case and the deceased being a lady, and the claimant being her son, 1/3rd of her mother's income along can be deducted towards her personal expenses, but the Tribunal deducted 50%.

9. Per contra, the learned counsel appearing for the second respondent would submit that the Tribunal after considering the age of the deceased and also considering the fact that the first claimant is a bachelor, and the deceased is her mother, 50% has been deducted towards her personal expenses and there is no error in the order passed by the Tribunal.

10. I have considered the submissions made on either side and perused the materials available on records carefully.

11. The deceased was 47 years old lady. The first claimant is her only son and he lost her mother in the said accident. Even though it is stated that she was earning Rs.12,000/- per month as a cook, no evidence was available on record to substantiate the case, the Tribunal fixed the monthly income at Rs.8000/- and added 25% towards future prospects, arrived at a notional monthly income at Rs.10,000/- and the notional annual income comes to Rs.1,20,000/- and this Court finds no error in it. However, the Tribunal deducted 50% towards the personal expenses of the deceased. Admittedly, the deceased is married lady, and the first claimant is her only son, and as per the Judgment of the Hon'ble Supreme court in Saralavarma's case, which was subsequently confirmed in the Pranay Sethi's case, 1/3rd of her monthly income can alone be deducted towards personal expenses. The Tribunal treated the deceased son as bachelor, and 50% of her monthly income was deducted towards personal expenses. In the said circumstances, the order passed by the Tribunal is liable to be modified to that effect. Hence, after deducting 1/3 towards her personal expenses, the annual notional income of the deceased comes to (1,20,000-40000) Rs.80000. After applying the multiplier of 13, the loss of dependency comes to Rs.10,40,000/- (80000x13). In respect of other heads, the Tribunal has awarded a fair compensation and there is no need to interfere with the same.

12. Considering all the above circumstances, the award passed by the Tribunal modified as follows:-



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Sl. No.	Headings	Amount Awarded by the Tribunal Rs.	Amount awarded by this Court	Award confirmed or enhanced
1	Loss of dependency	7,80,000	10,40,000	enhanced
3	Loss of love and affection	40,000	40,000	confirmed
3	Loss of estate	15,000	15,000	confirmed
4	Funeral expenses	15,000	15,000	confirmed
5	Transportation Expenses	5,000	5,000	confirmed
	Total	8,55,000	11,15,000	enhanced

13. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal in M.C.O.P.No.184 of 2012 is enhanced from Rs.8,55,000/- to Rs.11,15,000/- with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. The first appellant is directed to pay necessary Court fee, if any, on the enhanced compensation. The second respondent/Insurance Company is directed to deposit the enhanced award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the first appellant is permitted to withdraw the said amount along with interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-
Assistant Registrar(CS IX)

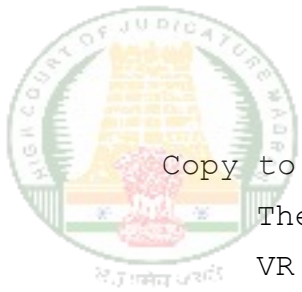
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Sub Assistant Registrar

mrp

To

The Motor Accidents Claims Tribunal,
III Additional District and Sessions Court,
Virudhachalam.



Copy to:

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

+1cc to Mr.R. Sivakumar , Advocate SR.No. 42851

+1cc to Mr.S. Udhayakumar , Advocate SR.No. 42549

+1cc to Mr.J.Chandran, Advocate SR.No. 43046

C.M.A.No.2150 of 2019

AK(CO)

A.SK(01.10.2021)