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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28-09-2020

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.A. No.3684 of 2019

1.G.Jayalakshmi

2.Jayala alias Jayalakshmi

..Appellants/Petitioners

vs.

1.NSK Builders,
No.73/12A, Annamalai Nagar,
Trichy.

2.Divisional Manager,
United India Insurance Company Ltd.,
Plot No.35,36,37 A.R.Plaza,
45 Feet Road, Balaji Nagar Extension,
Saram,
Puducherry.

..Respondents/Respondents

The Civil Miscellaneous Appeal is preferred under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 09.03.2017 passed in M.C.O.P. No.948 of 2016 on the file of the learned Special Sub Judge, Special Sub Court-cum-Motor Accidents Claims Tribunal, Cuddalore.

For Appellants : Mr.S.Udhayakumar

For Respondent No.1 : No Appearance

For Respondent No.2 : Mr.A.Dhiraviyanathan

J U D G M E N T

The judgment and decree dated 09.03.2017 passed in M.C.O.P. No.948 of 2016 by the learned Special Sub Judge, Special Sub Court-cum-Motor Accidents Claims Tribunal, Cuddalore, is under challenge in the present Civil Miscellaneous Appeal.

2. The claimants, who are the appellants herein, have filed the present Civil Miscellaneous Appeal, seeking enhancement of compensation.



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3. The accident occurred on 21.12.2015 at about 12.30 Hours at 1-A Mine to Madhakoil Road, near Bridge, situated near Modern Water Refinement Pump Complex. The SHO Neyveli TS Police Station registered a case in Crime No.368 of 2015.

4. The deceased Mr.Gopalakrishnan @ Gopal was riding Hero Honda splendor Motorcycle bearing Registration No.TN-31-BX-5640 with his wife Jayalakshmi and the deceased minor baby-son Dharun from East to West. A tipper lorry bearing Registration No.TN-22-BT-5730 came from the opposite direction at a great speed in a rash and negligent manner dashed with the motorcycle of the deceased and due to that the rider of the vehicle Mr.Gopalakrishnan and his baby-son were dead. The wife and the aged mother of the deceased were the claimants. Even in the claim petition, it is stated that the deceased was working as a Contract Labour at Mine II Neyveli Lignite Corporation Ltd., Neyveli and the monthly income of the deceased, at the time of accident, was Rs.30,000/- per month.

5. The claim petition was filed by the appellants-claimants before the Tribunal.

6. The Tribunal adjudicated the issues with reference to the documents and evidences produced by the respective parties.

7. The learned counsel appearing on behalf of the appellants-claimants mainly contended that the monthly income of Rs.7,000/- fixed by the Tribunal is improper and further the claimants established before the Tribunal that the deceased was working as Contract Labour in Mine II at Neyveli Lignite Corporation Limited, Neyveli. The accident occurred in the year 2015 and therefore, fixing of Rs.7,000/- as monthly salary of the deceased is on the lower side and the said salary is to be enhanced. The salary fixed by the Tribunal is not even coming under the Minimum Wages Act principles. Therefore, the compensation is to be enhanced under the head of dependency. The Tribunal has not considered the fact that the deceased was working in Neyveli Lignite Corporation Limited, Neyveli as Contract Labour. Thus, the present Civil Miscellaneous Appeal is filed by the appellants-claimants, seeking enhancement of compensation.

8. The learned counsel appearing on behalf of the second respondent-Insurance Company disputed the contentions of the learned counsel appearing on behalf of the appellants-claimants, by stating that the claimants have not produced any proof of income, so as to establish the monthly salary of the deceased. Thus, the Tribunal has fixed the notional monthly



income as Rs.7,000/- and there is no error apparent on the part of the Tribunal. The Tribunal has granted a reasonable amount as compensation and accordingly, the Civil Miscellaneous Appeal is liable to be dismissed.

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9. The Tribunal considered the issues and the factum regarding the accident was established. The accident occurred due to the rash and negligent driving of the driver of the Tipper lorry and accordingly, the lorry driver is responsible for the cause of the accident and consequently, the second respondent-Insurance Company is liable to pay compensation to the appellants-claimants.

10. As far as the quantum of compensation is concerned, a sum of Rs.7,000/- was fixed as a notional monthly salary of the deceased.

11. This Court is of the considered opinion the fact that the deceased was working as Contract Labour at Mine II Neyveli Lignite Corporation Ltd., Neyveli was not disputed nor rebutted before the Tribunal. Thus, the Tribunal ought to have considered the fact that the salary, being fixed, has been paid to other employees, who all are working in the Neyveli Lignite Corporation Limited as Contract Labourers. Undoubtedly, a sum of Rs.7,000/- fixed by the Tribunal is on the lower side.

12. This Court is of the considered opinion that a sum of Rs.10,000/- per month would be appropriate for the purpose of quantifying compensation under the head of loss of dependency. Accordingly, the appellants-claimants are entitled for the enhanced compensation by fixing the notional monthly salary of the deceased as Rs.10,000/-. Thus, the compensation awarded by the Tribunal stands modified as detailed hereunder:-

	Rs.
Loss of Dependency	15,52,082/-
Consortium for wife	40,000/-
Parental Consortium for mother	40,000/-
For Medical Bills	60,314/-
For Funeral Expenses	15,000/-
Loss of Estate	15,000/-

Total Rs.17,22,396/-
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Thus, the appellants-claimants are entitled for a total compensation of Rs.17,22,396/- with accrued interest at the rate of 7.5% per annum.



13. The second respondent-Insurance Company is directed to deposit the entire award amount with accrued interest, within a period of twelve weeks from the date of receipt of a copy of this judgment and on such deposit, being made, the appellants-claimants are permitted to withdraw the entire award amount along with accrued interest by filing an appropriate application before the Tribunal and payments are to be made through RTGS.

14. Accordingly, the judgment and decree dated 09.03.2017 passed in M.C.O.P. No.948 of 2016 by the learned Special Sub Judge, Special Sub Court-cum-Motor Accidents Claims Tribunal, Cuddalore, stands modified and consequently, CMA No.3684 of 2019 is allowed in part. However, there shall be no order as to costs.

s/d-
Assistant Registrar(CS-I)

True Copy

Sub-Assistant Registrar

Svn
To

1.The Special Sub Judge,
Special Sub Court-cum-Motor Accidents Claims
Tribunal,
Cuddalore.

+1 CC to Mr.A.Dhiraviyanathan, Advocate sr 31886.

CMA No.3684 of 2019

KJ(CO)
SP(18/08/2021)