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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2020

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

C.M.A.No.2940 of 2019

1.Kalaiselvi

2.Peraarasu (Minor)

3.Jeeva

4.Shaliny(Minor)

(Minors are represented by
their mother and Natural Guardian)

...Appellants

Vs.

1. Nanda Kumar

2. ICICI Lombard General Insurance Co., Ltd.,
No.140, Chottabhai Centrem
2nd & 3rd Floor,
Nungambakkam,
Chennai-600034.

...Respondents

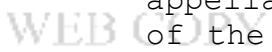
PRAYER:- Civil Miscellaneous Appeal preferred under Section 173 of Motor Vehicles Act, 1988 to enhance the award passed by VI Motor Accident Claims Tribunal (Court of Small Causes), Chennai dated 11.10.2018 made in M.A.C.T.O.P.No.2162 of 2015.

For Appellants : Mr.K.V.Muthu Visakan

For Respondents : Mr.K.Poomalai, for R2

J U D G M E N T

Feeling unsatisfied with the quantum of compensation awarded by the VI Motor Accidents Claims Tribunal, Court of Small Causes, Chennai, in MACTOP No.2162 of 2015, dated 11.10.2018, the claimants are before this Court with this appeal seeking enhancement of compensation.



The deceased one Illaiyaraja, is the husband of the first appellant and father of the second and fourth appellants and son of the third appellant. On 21.12.2014 at about 10.00 A.M., when the deceased was riding his motor cycle at Padappai to Vandalur main road, and while taking a turn opposite to Government Boys Higher Secondary School, Kilapadappai, a car bearing registration No.TN 11 A 3636, belongs to the first respondent, which was insured with the second respondent, came in a rash and negligent manner from Vandalur to Padappai direction, dashed against the motor cycle, in which, the deceased sustained fatal injuries. At the time of accident, the deceased was 32 years old and he was a heavy vehicle driver having valid driving license with an endorsement to drive the heavy vehicle, and working at S.S.Enterprises, earning a sum of Rs.20,000/- per month. He was the sole breadwinner of the family and the appellants/claimants, being the legal representatives, claiming a compensation of Rs.40,00,000/- filed the claim petition.

4. In order to prove their claim, the claimants examined two witnesses and marked as many as 18 documents. On the side of the respondents, neither any witness has been examined nor any documents was marked.

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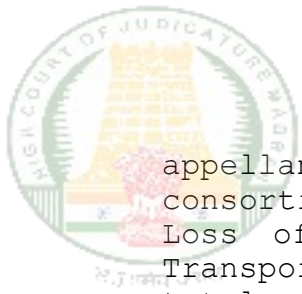
consortium, Rs.15,000/- each towards funeral expenses and loss of estate and Rs.5000/- towards Transport expenses and a total sum of Rs.30,74,000/- was awarded as compensation. Not satisfied with the same the appellants are before this Court with this appeal.

6. The learned counsel for the appellant would submit that the deceased was 30 years old at the time of accident and he was a heavy vehicle driver having valid license with endorsement, he was employed at a private agency and getting a monthly salary of Rs.20,000/-, to prove the same, his salary certificate was marked as Ex.P9. The Tribunal, without considering the same, simply fixed the monthly salary at Rs.14,000/-. That apart, towards the loss of consortium a sum of Rs.40,000/- alone awarded against the guideline issued by the Hon'ble Supreme Court in the case of National Insurance Company /vs/ Pranay Sethi and others reported in 2017 (2) TNMAC 609 .

7. The learned counsel for the second respondent would submit even though the salary certificate of the deceased was marked, to prove the same, no evidence has been let in . Hence, the Tribunal fixed the monthly income at Rs.14,000/-, which itself is higher side and according to him, proper compensation was awarded by the Tribunal and there is no need to interfere with the same.

8. I have considered the rival submissions and perused the materials available on records carefully.

9. The deceased was a heavy vehicle driver and he was also having a valid driving licence with endorsement, which was marked as Ex.P.6. To prove that the deceased was working in a private agency, called S.S.Enterprises, the salary certificate issued by his employer was marked as Ex.P.9, which shows that the monthly salary of the deceased was Rs.20,000/-. However, to support the same, the employer was examined, hence, the Tribunal fixed the monthly salary at Rs.14,000/- . Considering the fact that the deceased was a heavy vehicle driver and also employed in a private agency, he could easily get Rs.15,000/- per month. In the said circumstances, the monthly income of the deceased is fixed at Rs.15,000/- and adding 40% towards future prospects (15000+6000), comes to Rs.21,000/- and deducting 1/4 towards his personal expenses (21000-5250), the notional monthly income of the deceased would be Rs.15,750/-. As the deceased was 30 years old, applying the multiplier of 17, the loss of dependency comes to Rs.32,13,000/- (Rs.15750x12x17). That apart, the first appellant, being wife is entitled for a sum of Rs.40,000/- towards filial consortium and the appellants 2 and 4, being minor children are entitled for a sum of Rs.80,000/- for loss of love and affection and Parental Consortium and the third



appellant is entitled for a sum of Rs.40,000/- towards filial consortium. Apart from that, a sum of Rs.15,000/- each towards Loss of Estate and Funeral expenses and Rs. 5000/- towards Transport expenses, awarded by the Tribunal are confirmed; In total, a sum of Rs.34,08,000/- is awarded instead of Rs.30,74,000/- awarded by the Tribunal. The appellants are entitled to the enhanced amount as per the apportionment ordered by the Tribunal.

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal in M.C.O.P.No.2162 of 2015 is enhanced to Rs.34,08,000/- with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. The appellant is directed to pay necessary Court fee, if any, on the enhanced compensation. The respondents are 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. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

mrp

To

The VI Motor Accidents Claims Tribunal,
Court of Small Causes, Chennai.

Copy To:
The Section Officer,
V.R.Section,
High Court, Chennai.

+1 CC to M/s.K.V.Muthuvisakan, Advocate, Sr.37658.

+1 CC to Mr.Poomalai, Advocate, Sr 37583.

C.M.A.No.2940 of 2019

AD(CO)
LS(13/08/2021)