IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

C.M.A.No.1709 of 2020

1. Balakrishna

2. Minor Anusha @ Amudala Anusha

.. Appellants/Petitioners

Vs.

1. Mokkala Bharathi
(R1 remained exparte before the Tribunal-
Presence may be dispensed with)

2. IFFCO TOKIO General Insurance Company Limited,
Having its office at No.28, 1st & 2nd Floor,
North Usman Road, T.Nagar,
Chennai - 600 017.

.. Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Order and Decree dated 28.11.2019, made in M.C.O.P.No.942 of 2015, on the file of the Motor Accident Claims Tribunal, IV Additional District Court, Ponneri.

For Appellants	:	Mr.Terry Chellaraja for Mr.K.M.Ramesh
For Respondent 2	:	Mr.J.Michael Visuvasam

J U D G M E N T

Not fully satisfied with the compensation awarded by the Motor Accident Claims Tribunal, the claimants are before this Court with this appeal seeking enhancement of compensation.

2. It is a case of fatal accident. The deceased is the wife of the first appellant and mother of the second appellant. The case of the appellants/claimants before the Tribunal was that on 30.07.2015 at about 04.30 a.m. while the deceased was travelling in a car, the driver suddenly took a U-turn at Narasapura and dashed against another vehicle, in which, the deceased sustained severe head injury and died on the spot. At the time of the accident, the deceased was 33 years old and she was working as a tailor and was earning a sum of Rs.25,000/- per month and hence claiming a sum of Rs.20,00,000/- as compensation the appellants/claimants filed the claim petition before the Tribunal.

3. The first respondent owner of the offending vehicle remained ex parte. The second respondent / insurance company contested the claim petition stating that the petition is not maintainable as the accident had taken place due to the rash and negligent driving of the driver of the first respondent car and hence the second respondent / insurance company is not liable to pay compensation. That apart, the second respondent / insurance company has also disputed the monthly income of the deceased and also stated that the compensation claimed by the appellants/claimants are very excessive.

4. In order to prove the case, the appellants/claimants examined two witnesses as P.Ws.1 and 2 and marked as many as nine exhibits as Exs.P1 to P9. On the side of the respondents no witness was examined and no document was marked.

5. The Tribunal after considering the materials available on record, came to the conclusion that the accident had taken place due to the rash and negligent driving of the driver of the first respondent car and held that the first respondent and the second respondent/insurance company are jointly and severally liable to pay compensation to the appellants/claimants. So far as the quantum of compensation is concerned, considering the fact that the deceased was a tailor, the Tribunal fixed the notional monthly income at Rs.10,000/- and after deducting 1/3 towards her personal expenses, arrived at the notional monthly income of the deceased at Rs.6,667/-. After applying multiplier 16 awarded a sum of Rs.12,80,064/- towards loss of dependency. The Tribunal awarded a sum of Rs.40,000/- towards loss of love and affection; Rs.15,000/- was awarded towards loss of estate; and Rs.15,000/- was awarded towards funeral expenses. Thus, the Tribunal arrived at a total compensation of Rs.13,50,064/-. Not being satisfied with the said compensation awarded by the Tribunal, the appellants/claimants seeking enhancement of compensation has filed the present appeal before this Court.

6. I have heard the learned counsel on either side and also perused the records carefully.

7. The appellants/claimants are the husband and minor daughter of the deceased. The case of the appellants/claimants is that at the time of the accident, the deceased was earning a sum of Rs.25,000/- per month. To prove the same except the oral evidence of P.W.1, the first appellant herein, there is no material available on record. On considering the facts and circumstances of the case, the Tribunal fixed the notional monthly income of the deceased at Rs.10,000/-. The learned counsel appearing for the appellants/claimants would submit that as per the guidelines issued by the Hon'ble Supreme Court in National Insurance Company Limited vs. Pranay Sethi and Ors reported in (2017) 16 SCC 680, the Tribunal failed to add any amount towards future prospects and for loss of consortium. As the deceased was 32 years old at the time of the accident and as she was working as a tailor, and as per the guidelines issued by the Hon'ble Supreme Court in Pranay Sethi case (cited supra) 40% of the monthly income should be added towards future prospects, which comes to Rs.14,000/-. The Tribunal has deducted 1/3 towards personal expenses.

8. The learned counsel appearing for the second respondent/insurance company would contend that the deceased being a lady and husband is having a separate income, the husband and minor child being the claimants, 50% of the monthly income should be deducted towards her personal expenses. The said contention of the learned counsel cannot be countenanced as the deceased being a self employed lady and husband is also drawing separate income and looking after the household expenses, her personal expenses would be very much less and the Tribunal has rightly deducted 1/3 towards her personal expenses, which need not be interfered with. Hence after deducting 1/3 towards personal expenses her notional monthly income comes to Rs.9,300/- (Rs.14,000 / 1/3 = 9,300) and applying multiplier 16, the loss on dependency will be at Rs.17,85,600/- (9300x12x16=17,85,600). As the first claimant being the husband, he is entitled for a sum of Rs.40,000/- towards loss of consortium and hence total compensation amount comes to Rs.18,95,600/- instead of Rs.13,50,064/- awarded by the Tribunal. In respect of other heads are concerned, the Tribunal has rightly granted compensation and there is no need to interfere with the same.

9. In view of the above, the compensation awarded by the Tribunal is modified as follows:

Sl. No.	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted or reduced (Rs.)
1.	Loss of dependency	12,80,064	17,85,600	Enhanced
2.	Loss of Estate	15,000	15,000	Confirmed
3.	Funeral Expense	15,000	15,000	Confirmed
4.	Loss of love and affection for second appellant	40,000	40,000	Confirmed
5.	Loss of consortium for first appellant	-	40,000	Granted
	Total	13,50,064	18,95,600	Enhanced by Rs.5,45,536/-

10. So far as apportionment is concerned, considering the fact that the second appellant/ second claimant is a minor daughter, school going girl, this Court is of the view that major portion of the compensation should be granted to the second appellant/second claimant which will ensure her future studies. In view of the above, out of the total compensation of Rs.18,95,600/-, a sum of Rs.15,00,000/- is awarded to the second appellant / second claimant, and the remaining sum of Rs.3,95,600/- is awarded to the first appellant / first claimant.

11. In the result, the Civil Miscellaneous Appeal is partly allowed and the compensation of Rs.13,50,064/- awarded by the Tribunal is hereby enhanced to Rs.18,95,600/- together with interest at the rate of 7.5 % per annum from the date of claim petition till the date of deposit. 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 six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.942 of 2019, on the file of the Motor Accident Claims Tribunal, IV Additional District Judge, Ponneri. On such deposit, the first appellant is permitted to withdraw the award amount now determined by this Court, along with interest and costs, less the amount, if any, already withdrawn by making necessary applications before the Tribunal. So far as the amount awarded to the 2nd appellant, the amount should be deposited in a fixed deposit in a nationalised

bank initially for a period of three years and the second appellant is permitted to withdraw the accrued interest periodically. The appellants/claimants are directed to pay necessary Court fee, if any, on the enhanced compensation now determined by this Court. No costs.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal,
   IV Additional District Judge, Ponneri.

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

+1cc to Mr.K.M.Ramesh, Advocate, S.R.No.37208

+1cc to Mr.J.Michael Visuvasam, Advocate, S.R.No.37299

C.M.A.No.1709 of 2020

RSI(CO)
RLP(03/09/2021)