IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.11.2020

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

C.M.A.No. 1514 of 2020

1. T.Rani
   W/o. Thanapal

2. I.Sasikala
   W/o. Indrajith

3. Geetha,
   W/o. Natarajan

4. T.Sivaprakash,
   S/o. Thanapal (died)

5. T.Tamilvanan
   S/o. Thanapal (died)

All are residing at
Mariammankoil Street,
Reddichavadi and Post,
Cuddalore Taluk.

...Appellants/Petitioners

Vs.

1. G.Yuvaraj,
   S/o. Govindaraj,
   Rajapalaya Street,
   Padur, Ulundurpet Taluk,
   Villupuram District.

2. United India Insurance
   Company Limited,
   Third Party Service Hub,
   Plot No.35, 36, 37, A.R.Plaza,
   45 ft. Road, Balaji Nagar Extn.,
   Saram, Puducherry.

...Respondents/Respondents

PRAYER:- Civil Miscellaneous Appeal preferred under Section 173 of Motor Vehicles Act against the judgment and decree in M.C.O.P. No.2249 of 2017, dated 19.02.2020 on the file of the Motor Accident Claims Tribunal/II Additional Subordinate Judge, Cuddalore.

For Appellants : M/s.Ramya V. Rao

For Respondents : R1 - dispensed with

Mr.M.Krishnamoorthy for R2

JUDGMENT

The claimants, not being satisfied with the quantum of compensation awarded by the Motor Accidents Claims Tribunal/II Additional Subordinate Judge, Cuddalore in MCOP No.2249 of 2017, have filed the present Civil Miscellaneous Appeal before this Court.

2. The case of Appellants/claimants before the Tribunal is that the deceased Thanapal is the husband of 1st appellant and father of appellants 2 to 5. On 24.04.2017 at about 12.00 p.m. when the deceased was walking in the extreme left of Trichy to Chennai National Highways, near Senkurichi colony, a Tata Bolt XE Car bearing Regn. No.TN-15-A-9698 owned by the 1st respondent, which was insured with the 2nd respondent came in a rash and negligent manner and dashed against the deceased and he was declared dead at the Government Hospital, Ulundurpet. The deceased Thanapal was working as mason, earned a sum of Rs.18,000/- per month, and he was the sole bread-winner of the family. Due to the accident, the appellants have suffered heavy monetary loss. Hence, claiming the compensation of Rs.30 lakhs, the claim petition has been filed by the appellants.

3. The 1st respondent/owner of the vehicle remained exparte and the second respondent Insurance Company contested the claim petition on the ground that, the accident has been taken place only due to the negligence of deceased, when he was negligently crossing the national highways. Hence, the Insurance company is not liable to pay compensation. That apart, the compensation claimed by the claimants before the Tribunal is highly excessive and also disputed the monthly income of deceased.

4. In order to prove their claim, the Appellants/claimants examined the 1st appellant as P.W.1 and an eye-witness was examined as P.W.2 and marked as many as 8 exhibits. 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, has come to a conclusion that the accident has been

taken place due to the rash and negligent driving of the car and held that the respondents are liable to pay the compensation. So far as the quantum of compensation is concerned, the Tribunal had fixed the monthly income of the deceased as Rs.8000/-. As the age of deceased is 52 years at the time of accident, after deducting 1/4th towards personal expenses and applying multiplier of 11, the Tribunal has arrived the loss of dependency as Rs.8,71,200/-. Towards loss of estate and funeral expenses, a sum of Rs.15,000/- each has been awarded. That apart, towards loss of consortium, a sum of Rs.40,000/- has been awarded by the Tribunal. In total, a sum of Rs.9,41,200/- was granted as compensation. Not being satisfied with the same, the claimants have filed this Civil Miscellaneous Appeal before this Court.

6. The learned counsel appearing for appellants would contend that the deceased was working as a mason and he was earning a sum of Rs.18,000/- per month. But, the Tribunal without any reason whatsoever has only fixed the monthly income as Rs.8000/-. Towards future prospects, only a meagre amount has been granted and no amount has been granted by the Tribunal towards loss of love and affection. Hence, claiming enhancement of compensation, the present appeal has been filed.

7. Per contra, the learned counsel appearing for insurance company vehemently contended that, even though the deceased was alleged to have working as a mason, there is no evidence to prove the same. However, the Tribunal considering the circumstances, had rightly fixed the monthly income of deceased as Rs.8000/-. So far as the claimants are concerned, the appellants 2 and 3 are married son and daughters and 1st claimant wife alone was living with the deceased. Hence, the Tribunal ought to have deducted 1/3rd towards personal expenses instead of 1/4th. The learned counsel has also contended that the Tribunal has awarded a fair compensation and there is no reason to interfere with the same.

8. I have considered rival submissions of learned counsel appearing for appellants as well as learned counsel appearing for 2nd respondent Insurance Company and perused the materials available on records.

9. From the materials available on record, it could be seen that the deceased was working a mason and aged about 52 years. It is stated that the deceased was earning a sum of Rs.18,000/- per month, whereas, the Tribunal without any reason whatsoever had fixed the notional monthly income of deceased as Rs.8000/-. Considering the fact that the deceased being a skilled labour and accident has been taken place in the year 2017, the deceased could have easily earned a sum of Rs.12,500/- per month. The Tribunal without any reason whatsoever fixed the monthly

notional income of deceased as Rs.8000/-, which is liable to be enhanced. That apart, as per the judgment of Hon'ble Supreme Court of India in the case of National Insurance CO.Ltd., /vs/ Pranay Sethi and others reported in 2017 (16) SCC 680, 10% of notional monthly income has to be added for future prospects, which comes to Rs.1250/-. So far as deduction is concerned, as rightly contended by the learned counsel appearing for insurance company, out of five claimants, two claimants are married daughters and other sons are also major, who are aged about 27 and 24 years. Hence, 1/3rd of monthly income of the deceased can be deducted towards personal expenses, and after deducting 1/3rd monthly income and applying multiplier of 11, the loss of dependency comes to Rs.12,10,044/-, which was rounded as Rs.12,10,000/- (13750 - 4583 = 9167 x 11 x 12). That apart, a sum of Rs.40,000/- is fixed towards loss of consortium to the 1st appellant and a sum of Rs.1,60,000/- is fixed towards love and affection for the children and a sum of Rs.15,000/- each is awarded towards loss of estate and funeral expenses respectively. Accordingly, the compensation is enhanced to Rs.14,40,000/- instead of Rs.9,41,200/- awarded by the Tribunal. In the said circumstances, the award passed by the Tribunal is modified as follows :-

Sl. No.	Headings	Amount Awarded by the Tribunal Rs.	Amount awarded by this Court	Award confirmed or enhanced
1	Loss of dependency	8,71,200	12,10,000	enhanced
2	Loss of estate	15,000	15,000	confirmed
3	Loss of consortium for 1st appellant	40,000	40,000	confirmed
4	Funeral expenses	15,000	15,000	confirmed
5	Loss of love and affection for appellants 2 to 4 each	Nil	1,60,000	granted
	Total	9,41,200	14,40,000	enhanced

Thus, the appellants are entitled to get a sum of Rs.14,40,000/- towards compensation instead of Rs.9,41,200/- awarded by the Tribunal.

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.9,41,200/- is hereby enhanced to Rs.14,40,000/- together with interest at the rate of 7.5% per annum from the date of

petition till the date of deposit. The appellants are directed to pay necessary Court fee, if any, on the enhanced compensation. The 2nd 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. On such deposit of the enhanced compensation amount, now determined by this Court, the appellants are entitled to share the amount proportionately as ordered by the Tribunal and the appellants are permitted to withdraw the enhanced award amount along with interest and costs, less the amount if any, already withdrawn. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

The Motor Accidents Claims Tribunal,
II Additional Sub-Court, Cuddalore.

C.M.A.No.1514 of 2020

CNR(CO)
SP(27/11/2020)