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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

C.M.A.No.1534 of 2020

1. Chinnapillai,
W/o. Chinnappan

2. Chinnappan,
S/o. Nallamuthu

All are residing at
D.No.490, Kattukottai,
Paithur Post, Attur Taluk,
Salem District - 636 141.

.. Appellants/Claimants

Vs.

1. Raja,
S/o. Sengodan,
No.10, SSS Building AV Road,
Chamarajapet, Bangalore-560 018.
Permanent address :
D.No.3/88, Konerikadu,
Nattampalayam, Vattur Post,
Tiruchengode Taluk,
Namakkal District - 637 205.

2. The United India Insurance Co. Ltd.,
Divisional Office 2, First Floor,
Peramanur Main Road, Peramanur,
Salem District - 636 007.

.. Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and Decree dated 25.02.2020, made in M.C.O.P.No.65 of 2019, on the file of the Motor Accident Claims Tribunal/Principal District Judge, Salem.

For Appellants : Mr.T.S.Arthanareeswaran

For Respondents : Mr.S.Arunkumar for R2
R1-exparte before the Tribunal



J U D G M E N T

The claimants are the appellants, not feeling satisfied with the quantum of compensation awarded by the Tribunal, have filed this appeal seeking for enhancement of compensation.

2. The brief facts leading to the filing of this appeal are as follows:

It is a fatal accident claim. The deceased by name Selvakumar, who is son of claimants. He was a bachelor and aged about 35 years at the time of accident and he was working as a Driller in a rig supporting lorry owned by the 1st respondent, which was insured with the 2nd respondent. On 05.10.2017 at about 05.30 a.m., while he was standing behind the lorry to guide the driver of lorry to take reverse, at that time, the driver of lorry reversed the vehicle in a rash and negligent manner and hit the deceased, and the lorry run over him and he died on the spot. According to the claimant, at the time of accident, he was earning a sum of Rs.24,000/- per month and he was the sole bread-winner of the family. Hence, claiming a compensation of Rs.25 lakhs, the claimants have filed the claim petition.

3. The respondents have contested the claim petition and the 1st respondent has filed a counter affidavit contending that the accident was taken place only due to the negligence of deceased and also disputed the monthly income. He has further contended that the lorry was insured with the 2nd respondent and the insurer of the lorry has to indemnify the same. The 2nd respondent has also filed a counter affidavit stating that the accident took place due to the negligence of deceased and also disputed the monthly income. It is also stated that the compensation claimed by them is highly excessive.

4. Before the Tribunal, the claimants have examined 3 witnesses and marked as many as 16 documents as Exs.P1 to P16. 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 was taken place due to the rash and negligent driving of the driver of the lorry. Hence, the respondents are liable to pay the compensation. So far as quantum of compensation is concerned, the Tribunal had fixed the monthly income of deceased as Rs.10000/- and deducted 50% towards personal living expenses, arrived the annual monthly income of deceased as Rs.60,000/-. That apart, once again, the Tribunal has deducted another 1/3rd towards his personal expenses and finally arrived the notional



monthly income of deceased as Rs.40,000/-. Thereafter, the Tribunal has awarded 40% towards future prospects, and arrived the notional annual income of deceased at Rs.56,000/- and applied the multiplier of 16, arrived the loss of dependency at Rs.8,96,000/-. That apart, another sum of Rs.20,000/- was granted towards loss of love and affection, a sum of Rs.10,000/- was awarded towards funeral expenses, and a sum of Rs.10,000/- was awarded towards transport expenses. Finally, the Tribunal has awarded a sum of Rs.9,36,000/- as a total compensation. Aggrieved over the same, the claimants are before this court by way of filing the present appeal.

6. I have heard considered the submissions made by learned counsel appearing for appellants as well as 2nd respondent and perused the records.

7. The accident was taken place in the year 2017, and admittedly, the deceased was working as a Driller in a rig supporting lorry owned by the 1st respondent. The salary certificate of deceased was marked as Ex.P13 and the Assistant Manager of the company was examined as P.W.3. However, the Tribunal disbelieved the salary certificate, fixed the monthly income as Rs.10,000/- and deducted 50% towards personal expenses. The Tribunal also erroneously deducted another 1/3rd towards personal living expenses on the ground that there are two claimants. Thereafter, the Tribunal has added 40% towards future prospects, and arrived the notional monthly income at Rs.56,000/-. The method of calculation adopted by the Tribunal is totally erroneous. After deducting 50% towards personal expenses, the Tribunal ought not to have deducted another 1/3rd towards personal living expenses based on the number of claimants.

8. So far as monthly income of deceased is concerned, the deceased being a Driller in a rig supporting lorry, apart from salary, he would also get daily batta and hence, he would easily get a sum of Rs.11,000/- towards monthly income. At the time of accident, he was 35 years old and 40% of monthly income would be added as a future prospects, which comes to Rs.15,400/-. Since deceased is a bachelor, 50% of his monthly income should be deducted towards his personal living expenses. Hence, the notional monthly income of deceased would be Rs.7700/-. As the deceased was 35 years old, appropriate multiplier would be 16, and thus, the loss of dependency comes to Rs.14,78,400/- (Rs.7700 x 12 x 16). The claimants, being parents of deceased, they are entitled for filial consortium of Rs.80,000/-. That apart, they are also entitled to get a sum of Rs.15,000/- towards funeral expenses and a sum of Rs.15,000/- towards loss of estate. In the said circumstances, the award passed by the Tribunal is 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	8,96,000	14,78,400	enhanced
2	Loss of love and affection	20,000	80,000	enhanced
3	Funeral expenses	10,000	15,000	enhanced
4	Transport expenses	10,000	10,000	confirmed
5	Loss of estate	Nil	15,000	granted
	Total	9,36,000	15,98,400 (rounded to 16,00,000)	enhanced

Thus, the appellants are entitled to get a sum of Rs.16,00,000/- towards compensation instead of Rs.9,36,000/- awarded by the Tribunal.

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.9,36,000/- is hereby enhanced to Rs.16,00,000/- 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, 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.

Sd/-
Assistant Registrar (CS)

// True Copy //

Sub Assistant Registrar

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To:

The Principal District Judge,
Motor Accident Claims Tribunal
Salem.

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+1cc to Mr.S.Arunkumar, Advocate, S.R.No.39633

C.M.A.No.1534 of 2020

LN(CO)
SU(11/08/2021)