IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.10.2020

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

C.M.A.No.3253 of 2019

Kannaki .. Appellant/ Petitioner

Vs.

1. S.Sukumar

2. The Reliance General Insurance Co. Ltd., No.6, Hadows Road, Reliance House, 6th Floor, Nungambakkam, Chennai - 34. .. Respondents/ Respondents/

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Order and Decree dated 27.08.2018, made in M.C.O.P.No.4203 of 2016, on the file of the Motor Accident Claims Tribunal, (Special Sub Court No.1, Motor Accidents Claims Petitions) Small Causes Court, Chennai.

For Appellant : Mr.T.G.Ravichandrran

For Respondent 2 : Ms.C.Bhuvanasundari

J U D G M E N T

Not being satisfied with the compensation awarded by the Motor Accident Claims Tribunal, the appellant/claimant is before this Court with this appeal seeking enhancement of compensation.

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

(i) It is a case of fatal accident. The deceased in this case one Karunanithi, is the husband of the appellant/claimant. According to the claimant, on 21.05.2016, at about 07.20 hours, the deceased was waking along the Kodambakkam High Road, Chennai and at that time a two wheeler bearing Registration No.TN-01-BA-1810, owned by the first respondent herein, came in a rash and negligent manner and dashed against the deceased, in which, the deceased sustained multiple injuries. Immediately, he was taken to Royapettah Government Hospital and first aid was given to him. Thereafter, he was shifted to the Government General Hospital, Chennai where he died on the same day.

(ii) According to the claimants, the accident took place due to the rash and negligent driving of the first respondent and the vehicle being insured with the second respondent insurance company, both the respondents are liable to pay compensation.

(iii) According to the claimant, at the time of the accident, the deceased was aged about 53 years and was working as flower decorator and he was also doing farming in his agriculture land and earning a sum of Rs.16,000/- per month. The deceased was the sole bread winner of the family and due to his death, the appellant/claimant being the sole legal representative of the deceased, entitled to compensation and hence she filed the claim petition.

3. The first respondent, owner of the vehicle remained ex parte and the second respondent, with whom the vehicle of the first respondent was insured with, contested the claim petition. The second respondent / insurance company contended that the accident took place due to the negligence of the deceased and hence the respondents are not liable to pay any compensation. That apart, the age of the deceased at the time of the accident is more than 62 years and there is no proof available to show his monthly income.

4. In order to prove the claim, the claimant examined herself as P.W.1 and two other eye witnesses were also examined as P.W.2 and P.W.3 and marked as many as 12 documents. The second respondent / insurance company examined two witnesses and also marked five documents.

5. The Tribunal after considering the materials available on record came to the conclusion that the accident took place due to the negligent driving of the first respondent. So far as the monthly income of the deceased is concerned, the Tribunal fixed the monthly income at Rs.7,000/- and the age of the deceased as 62 years based on the date of birth mentioned in the voter's ID card of the deceased. After deducting 1/3 for his personal expenses, the notional annual income was arrived at Rs.56,000/-. Applying multiplier of 7, the Tribunal fixed the loss of dependency at Rs.3,92,000/-. For loss of consortium the Tribunal awarded a sum of Rs.40,000/-, for loss of estate a sum of Rs.15,000/- was awarded and for Transportation to hospital a sum of Rs.5,000/- was awarded, totalling a sum of Rs.4,67,000/- as compensation. Being aggrieved on the same, the appellant / claimant filed the present appeal seeking enhancement.

6. Mr.T.G.Ravichandrran, learned counsel appearing for the

appellant/claimant would contend that the Tribunal has fixed the monthly income of the deceased at Rs.7,000/- without considering the materials available on record. According to the learned counsel, the deceased was a flower decorator and was also having agriculture lands and getting income from the agriculture land. Hence, according to the learned counsel, he could easily get a monthly income of Rs.16,000/- but without assigning any reason whatsoever the Tribunal arbitrarily fixed the monthly income at Rs.7,000/-.

7. The learned counsel further contended that as far as the age of the deceased is concerned, in the postmortem certificate and the death certificate the age of the deceased was mentioned as 53 years. However, the Tribunal fixed the age as 62 years based on the Voter's ID card where it is only stated that the year of birth as 1954. That apart, according to the learned counsel even as per the family card produced by the insurance company issued in the year 2005-2009, the age of the deceased was stated as 50 years, but without considering the same, the Tribunal arbitrarily fixed the age of the deceased at 62 years and applied the multiplier of '7'. According to the learned counsel, the Tribunal ought to have fixed the age of the deceased as 53 years based on the above certificates and applied the multiplier '11' instead of multiplier '7'. Accordingly the monthly income also should be fixed at Rs.16,000/- based on the evidence available on record.

8. Per contra, the learned counsel appearing for the second respondent / insurance company would contend that even though the appellant/claimant has contended that the monthly income of the deceased is Rs.16,000/-, absolutely there is no evidence for the same. During the cross examination, P.W.1 has admitted that the deceased was not possessing any agricultural lands. Even assuming that the deceased was working as flower decorator, he would be hardly earning Rs.7,000/- and the Tribunal has rightly fixed the monthly income as Rs.7,000/- and therefore there is no reason to interfere with the same.

9. The learned counsel further contended that so far as the age of the deceased is concerned, the age mentioned in the postmortem certificate is only presumptive age and it cannot be taken into consideration, whereas, the voter ID card clearly mentioned his year of birth as 1954 and as the accident took place in the year 2016, the Tribunal rightly fixed the age of the deceased as 62 years and applied multiplier '7' and awarded just compensation and therefore there is no reason to interfere with the award of the Tribunal.

10. I have considered the above submissions and also perused the records carefully.

11. It is a case of fatal accident. The appellant/claimant is the wife of the deceased. It is the case of the claimant that at the time of the accident, the deceased was working as a flower decorator and he was also having agricultural lands and earning a monthly income of Rs.16,000/-. However, in the cross examination, she has admitted that they do not possess any agricultural lands, and it is stated that he was working as flower decorator, it is seriously not disputed by the respondents. Thus, the deceased who was working as a flower decorator in a flower shop, he could easily get Rs.400/- per day. Even assuming he was working for 20 days, he would easily get a monthly income of Rs.8,000/-. However, the Tribunal without any reason fixed the monthly income at Rs.7,000/-. Hence this Court is inclined to fix the monthly income of the deceased at Rs.8,000/- instead of Rs.7,000/- fixed by the Tribunal.

12. So far as the age of the deceased is concerned, the postmortem report and the death certificate which were marked as Exs.P5 and P6 respectively, the presumptive age of the deceased was stated as 53 years. However, in the investigation report filed by the second respondent / insurance company, which is marked a Ex.R5, wherein the insurance company has produced the voter ID and family card copies of the deceased. In the voter ID the year of birth of the deceased was mentioned as 1954, whereas the family card was issued for the years 2005-2009, the age of the deceased was stated as 50 years. The Tribunal relying upon the Voter ID fixed the age of the deceased as 62 years without considering the age mentioned in the family card. In such circumstances, assuming the age of the deceased is 50 years in 2005, considering the above age mentioned in the family card as well as in the postmortem certificate and the death certificate and the accident took place in the year 2016, this Court is of the view that the age of the deceased can be fixed as 60 years. Hence as per the judgment of the Hon'ble Supreme Court in Sarla Verma Vs. Delhi Transport Corporation reported in (2009) 6 SCC 121 the multiplier for age 60 would be '9'. Hence, the multiplier is also modified from '7' to '9'. Therefore, the total loss of dependency will be Rs.8,000 x 12 months x 1/3 x 9 multiplier = Rs.5,76,000/-. So far as the compensation awarded by the Tribunal on other heads are concerned, the Tribunal has awarded just and fair amount and I find no reason to interfere with the same.

13. 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.	Total Loss of dependency	3,92,000	5,76,000	Enhanced
2.	Loss of Consortium	40,000	40,000	Confirmed
3.	Loss of Estate	15,000	15,000	Confirmed
4.	Transport Charges	5,000	5,000	Confirmed
5.	Funeral Expenses	15,000	15,000	Confirmed
	Total	4,67,000	6,51,000	Enhanced by Rs.1,84,000

14. In the result, the Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.4,67,000/- is hereby enhanced to Rs.6,51,000/- 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.4203 of 2016, on the file of the Motor Accident Claims Tribunal, (Special Sub Court No.1, Motor Accidents Claims Petitions) Small Causes Court, Chennai. On such deposit, the appellant/claimant is permitted to withdraw the enhanced 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. The appellant/claimant is directed to pay the necessary Court fee, in any, on the enhanced amount of 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,
   (Special Sub Court No.1, Motor Accidents Claims Petitions),
   Small Causes Court, Chennai.

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

+1cc to Mr.T.G.Ravichandran, Advocate, S.R.No.34549

C.M.A.No.3253 of 2019

SAI(CO)
PM(06/08/2021)