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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.01.2020

CORAM

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH
AND
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A.No.4039 of 2019

1.Thesapattu
2.S.Vignesh
3.S.Vijay

... Appellants/Petitioners

Vs.

1.Jithin Appachan K
2.ICICI Lombard General Insurance Co., Ltd.,
Motor Third Party Claims Office,
Chotta Bai Buildings,
140, Nungambakkam High Road,
Chennai - 34.

... Respondents

PRAYER : Appeal filed under Section 173 of the Motor Vehicles Act, 1998 against the decree and judgment dated 12.03.2018 in M.C.O.P.No.7264 of 2014 on the file of Motor Accidents Claims Tribunal, Spl. Sub Judge I, Small Causes Court, Chennai.

For Appellants : M/s. Ramya V.RAo for
Mr.A.N.Viswanatha Rao

For Respondents : Mr.K.Poomalai for R2

JUDGMENT
(Delivered by M.M.SUNDRESH.,J)

The appellants are the claimants before the Tribunal. A sum of Rs.35,00,000/- has been claimed pursuant to the death of the deceased, who was the sole breadwinner as on 22.09.2014. The Tribunal awarded a sum of Rs.15,75,000/- as compensation by fixing the income of the deceased at Rs.10,000/- per month. Seeking enhancement for a sum of Rs.41,00,000/-, the present appeal has been filed.



2. The learned counsel appearing for the appellants would submit that the monthly income fixed by the Tribunal is too low. The Tribunal has not taken into consideration Exs.P6 and P7 which would clearly show that the deceased was self-employed as a fisherman. In such view of the matter, the appeal will have to be allowed.

3. The learned counsel appearing for the second respondent submitted that the Tribunal has granted just compensation. It is not as if the deceased was gainfully employed receiving fixed salary. Though it is admitted that the deceased was a fisherman, in the absence of any other material, no enhanced income can be fixed. Thus, the appeal will have to be dismissed.

4. The facts are not in dispute. These are with respect to the liability as well as the status of the deceased. The deceased was admittedly a fisherman. Therefore, the only question for consideration is as to whether the income fixed by the Tribunal is right as against the claim made by the appellant for a sum of Rs.15,000/- per month.

5. Inasmuch as the deceased was a fisherman, we are of the view that the Tribunal was not correct in fixing the monthly income at Rs.10,000/-. The deceased was a fisherman fishing in the sea. There is a difference between the working of a fisherman in the sea as against inland. Certainly, the catch in the sea will be much higher than the one situated in the inland. Thus, we are inclined to fix the monthly income of the deceased at Rs.13,000/-. On the question of deduction, future prospects, multiplier adopted and the other conventional heads, there is no quarrel as the Tribunal has rightly fixed the same, as submitted by the counsel for both the parties. Thus, while fixing the income at Rs.13,000/-, the pecuniary loss is arrived at Rs.18,19,440/- (Rs.13,000 + 25% of Rs.13,000 - $\frac{1}{3} \times 12 \times 14$), the amount awarded towards the other convention heads such as for loss of love and affection, loss of consortium, loss of estate, funeral expenses and transportation is confirmed as such. Thus, we fix the total compensation is at Rs.19,94,440/-, which is rounded off to Rs.20,00,000/- with the interest at 7.5% from the date of the petition till the date of realization. The enhanced compensation amount shall be apportioned amongst the claimants in the same ratio as ordered by the Tribunal.

6. The second respondent/Insurance Company is directed to deposit the enhanced compensation amount as awarded by this Court along with proportionate interest, less the amount, if any, already deposited to the credit of in M.C.O.P.No.7264 of 2014 on the file of Motor Accidents Claims Tribunal, Spl. Sub Judge I, Small Causes Court, Chennai within a period of six weeks from the date of receipt of a copy of the judgment.



7. We also direct the Tribunal to transfer the respective shares of the enhanced compensation amount by way of RTGS to the bank accounts of the claimants within a period of three weeks from the date of deposit of the award amount. On such transfer, the claimants are entitled to withdraw the same.

8. In view of the above, the Civil Miscellaneous Appeal stands allowed. No Costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

ssm

To

The Motor Accidents Claims Tribunal,
Spl. Sub Judge I,
Small Causes Court,
Chennai.

+1 CC to Mr.A.N.Viswanatha Rao, Advocate sr 5262.

+1 Cc to Mr.K.Poomalai, Advocate sr 4456.

C.M.A.No. 4039 of 2019

KJ(CO)
SP(18/09/2020)