IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2020

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

C.M.A.No. 1818 of 2020

1. Tamilselvi,
W/o. Late Palanisamy

2. Minor Prabakaran,
S/o. Late Palanisamy
Minor is represented by his
next friend/guardian/mother
Tamilselvi

3. Janaki,
W/o. Nadesan

4. Nadesan,
S/o. Perumal

D.No.412, Kattur,
Pudhupalayam, Alampalayam Post,
Komarapalayam Taluk,
Namakkal Dt.

Now residing at
D.No.63-A/52, Pachiyappa Sandu,
Karungalpalayam,
Erode Taluk, Erode Dt. ... Appellants /Petitioners

Vs.

1. P.Vijaikumar,
S/o. Palanisamy,
#2385, 25 Main Sector-1,
HSR Layout,
Bangalore-560 102
Karnataka State.

2. M/s.Cholamandalam MS General
Insurance Company Limited,
E.V.N. Road, Mosuvanna Street,
Nall Road, Erode-638 001. ... Respondents/Respondents

PRAYER:- Civil Miscellaneous Appeal preferred under Section 173 of Motor Vehicles Act against the Judgment and decree passed in

M.C.O.P. No.24 of 2018, dated 26.08.2020 on the file of the Special District Judge/Motor Accident Claims Tribunal, Erode.

For Appellants	:	Mr.M.Guruprasad
For Respondents	:	R1 – No appearance Mrs.R.Sreevidhya for R2

J U D G M E N T

The claimants are the appellants, filed this Civil Miscellaneous Appeal seeking for enhancement of compensation.

2. The case of claimants before the Tribunal in brief as follows :-

It is a case of fatal accident claim. The deceased by name Palanisamy, is the husband of 1st appellant, father of 2nd appellant and son of 3rd and 4th appellants. According to them, on 06.10.2017 at about 7.30 p.m. while the deceased was riding a motorcycle on the side of Taj Nagar main road in front of the APAT Manal office, at Pallipalayam, a car bearing Regn. No.KA-51 MD-9595 owned by the 1st respondent, which was insured with the 2nd respondent, came in a rash and negligent manner and dashed against the deceased, in which, he has sustained serious injuries. Immediately, he was admitted in the Government Hospital, Erode, wherein he succumbed to injuries. According to the claimants, the deceased was working as a Power Loom Weaver at Pallipalayam and earned a sum of Rs.18,000/- per month and he is being the sole bread-winner of the family. Hence, claiming compensation of Rs.30,00,000/-, the appellants have filed the claim petition before the Tribunal.

3. The 1st respondent / owner of the vehicle remain exparte. The 2nd respondent insurance company has contested the claim petition on the ground that the accident was taken place due to the rash and negligent driving of the deceased and no negligence would be fixed on the driver of the car. That apart, the 2nd respondent has disputed the monthly income of deceased and also stated that the quantum of compensation claimed by the claimants is highly excessive and speculative.

4. Before the Tribunal, the appellants have examined 3 witnesses and marked as many as 17 documents as Ex.P1 to P17. On the side of respondents, no witness was examined and marked as many as 2 documents as Ex.R1 and R2.

5. The Tribunal, after considering the materials available on record, has held that the accident was taken place due to the rash and negligent driving of the driver of a car. So far as

quantum of compensation is concerned, the Tribunal had fixed the monthly income of deceased as Rs.10,000/-, after deducting 40% of monthly income towards future prospects and deducting 1/4th of monthly income towards his personal expenses, applied the multiplier of 15, awarded a sum of Rs.18,90,000/- towards loss of dependency. Apart from that, in respect of other heads, the Tribunal has awarded a sum of Rs.15,000/- towards funeral expenses, a sum of Rs.15,000/- towards damages to clothes, a sum of Rs.80,000/- towards parental consortium, a sum of Rs.40,000/- towards filial consortium, a sum of Rs.40,000/- towards loss of consortium and a sum of Rs.10,000/- towards transport expenses. Thus, totally, the Tribunal has awarded a sum of Rs.20,90,000/- as compensation. Not being satisfied with the same, the claimants have filed this Civil Miscellaneous Appeal before this Court.

6. Mr.M.Guruprasad, learned counsel appearing for appellants would submit that the deceased was working as a Power Loom weaver and got the salary of Rs.15,000/- per month. To prove the same, the appellants have produced the salary certificate and his employer was also examined to that effect. However, without considering the same, the Tribunal had simply fixed the monthly income of deceased as Rs.10,000/-. That apart, towards parental consortium and filial consortium, the Tribunal has awarded very less amount.

7. Mrs. R. Sreevidhya, learned counsel appearing for 2nd respondent insurance company would submit that even though the salary certificate was marked and the employer was also examined, there is no other proof like attendance register and other necessary documents to show the monthly income. Considering the circumstances, the Tribunal has rightly fixed the monthly income of deceased as Rs.10,000/- and hence, there is no illegality in it. The learned counsel would further submit that towards parental consortium, the Tribunal has wrongly awarded a sum of Rs.80,000/-, since there is only one minor child. In respect of other heads also, the Tribunal has granted a just compensation to the parents and wife, and she has also relied upon the judgments of Hon'ble Supreme Court of India to support her contention.

8. I have considered the rival submissions made by learned counsel appearing for appellant as well as 2nd respondent and perused the materials available on records.

9. The accident has been taken place in the year 2017, the deceased was 37 years old at the time of accident and he was working as a powerloom weaver as per the evidence of P.W.3. The salary certificate was marked as Ex.P17 and his employer was examined as P.W.3. The Tribunal had fixed the monthly income of deceased on the ground that no attendance register and salary

register was marked. Considering the fact that he was working as a Power Loom Weaver, which was not disputed, he would easily get a sum of Rs.500/- per day and even assuming that he was working for 24 days per month, he will definitely get a sum of Rs.12,000/- per month. However, the Tribunal, without considering the same, has fixed the monthly income of deceased as Rs.10,000/- on the ground that there is no attendance register was marked. In the said circumstances, the monthly income of deceased is fixed as Rs.12,000/-. Considering the age of deceased as 37 years, 40% should be added as a future prospects, and there are four claimants, 1/4th of monthly income is necessarily to be deducted towards his personal expenses. Hence, the notional monthly income of deceased is arrived at Rs.12,600/- and applying the multiplier of 15, the loss of dependency comes to Rs.22,68,000/-. In respect of other heads, as sum of Rs.80,000/- was granted towards filial consortium, and for one minor child, he is entitled for a sum of Rs.40,000/- towards parental consortium as per the judgment of Hon'ble Supreme Court in the case of United India Insurance Co. Ltd., vs. Satinder Kaur @ Satwinder Kaur and others, reported in 2020 (2) TNMAC 1. Towards filial consortium, father and mother of deceased are entitled for a sum of Rs.40,000/- each. So far as other heads are concerned, the Tribunal has awarded a just and fair compensation. Hence, there is no need to interfere with the same.

10. 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	18,90,000	22,68,000	enhanced
2.	Funeral expenses	15,000	15,000	confirmed
3.	Damages to clothes	15,000	15,000	confirmed
4.	Parental consortium to 2nd appellant (minor child)	80,000	40,000	Reduced
5.	Filial consortium to appellants 3 and 4	40,000	80,000	enhanced
6.	Loss of consortium to the 1st appellant	40,000	40,000	confirmed
7.	Transport expenses	10,000	10,000	confirmed
	Total	20,90,000	24,68,000	Enhanced by Rs.3,78,000/-

Thus, the appellants are entitled to get a sum of Rs.24,68,000/- as compensation instead of Rs.20,90,000/- as awarded by the Tribunal.

11. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.20,90,000/- is hereby enhanced to Rs.24,68,000/- 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 1st, 3rd and 4th appellants are entitled to share the amount proportionately as ordered by the Tribunal and the 1st, 3rd and 4th appellants are permitted to withdraw the enhanced award amount along with interest and costs, less the amount if any, already withdrawn. As far as the share of minor appellant viz., 2nd appellant is concerned, the same shall be deposited in any nationalised bank in any interest bearing fixed deposit scheme until the minor attains majority and the interest thereon shall be withdrawn by minor appellant's mother, once in three months. No costs.

Sd/-

Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accidents Claims Tribunal,
Special District Judge, Erode.

+1cc to Mr.M.Guruprasad, Advocate, S.R.No.42748
+1cc to Mr.R.Sreevidhya, Advocate, S.R.No.42366

C.M.A.No.1818 of 2020

CP(CO)
GN(30/09/2021)