IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 01.09.2020

Judgment Delivered on : 25.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.No.3824 of 2019

1. Devi, W/o Kanakaraj

2. Minor Srikanth, S/o Kanakaraj

3. Minor Prasanth, S/o Kanakaraj
(Minors 2 and 3 appellants are represented by their next friend and mother 1st appellant)

4. Palaniammal, W/o Rajagopal

5. Rajagopal, S/o Palani ... Appellants/Petitioners

Versus.

1. Abubakkar

2. Divisional Manager,
National Insurance Company Ltd.,
No.74-A, Paramathy Road,
Namakkal, Namakkal District-637 001.
.. Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the award and decree dated 05.02.2019 made in M.C.O.P.No.1080 of 2016 on the file of the Motor Accident Claims Tribunal/Additional District Court, Namakkal.

For appellant : Mr.C.Thangaraju

For respondents : R-1 set ex-parte before the Tribunal
Mr.S.Arun Kumar for R-2

JUDGMENT

R.SUBBIAH, J

The appeal is heard through video-conferencing.

2. Not being satisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal/Additional District Court, Namakkal, in and by Order (Award) and decree, dated 05.02.2019 in M.C.O.P.No.1080 of 2016, the present appeal had been filed by the claimants, for enhancement of the

compensation amount.

3. The appellants are the wife, minor children and parents of the deceased Kanakaraj, who had died in a road accident that had occurred on 21.05.2016 involving a lorry bearing Registration No.TN-20-D-1642, owned by the first respondent herein and insured with the second respondent-Insurance Company.

4. For the purpose of convenience, the parties herein are referred to as they ranked before the Tribunal as claimants and respondents.

5. The case of the appellants/claimants is that on 21.05.2016, at about 02.30 p.m., while the deceased Kanakaraj was proceeding in his two-wheeler bearing Registration No.TN-34-V-8323 on Thiruchengode-Namakkal Road, a lorry bearing Registration No.TN-20-D-1642, came from the opposite direction and dashed against the victim (deceased) and thus, caused the accident, in which, the said victim-Kanakaraj died on the spot itself. At the time of accident, the deceased Kanakaraj was about 32 years old and was working as a Labourer (Sizing Warber) at Thiruchengode Barani Sizing Mill (private Mill) at Thiruchengode. Hence, the claimant made a claim of Rs.50,90,000/-, which was restricted to Rs.40 lakhs.

6. The claim petition filed before the Tribunal by the claimants, was resisted by the second respondent-Insurance Company by filing a detailed counter-statement.

7. In order to prove their case, the wife (of the deceased)/first claimant examined herself as P.W.1, besides examining one Kuppusamy as P.W.2, who was an eye-witness to the accident. One Ramaraj, the Manager of the said Mill was examined as P.W.3 and Exs.P-1 to P-13 were marked. No oral and documentary evidence was adduced on the side of the respondents before the Tribunal.

8. The Tribunal, on an analysis of the evidence available on record, had come to the conclusion that the accident was due to the rash and negligent driving of the said lorry by its driver and directed the second respondent-Insurance Company to pay the compensation amount by indemnifying the first respondent-owner of the said lorry, bearing Registration No.TN-20-D-1642. The break-up details of the compensation awarded by the Tribunal are as follows:

Sl.No.	Head under which the amount was awarded by the Tribunal	Amount awarded in Rs.
1	Loss of Income	13,10,400
2	Loss of Estate	15,000
3	Funeral expenses	15,000
4	Loss of Consortium	40,000

Sl.No.	Head under which the amount was awarded by the Tribunal	Amount awarded in Rs.
	Total	13,80,400

The Tribunal awarded interest at the rate of 7.5% on the said compensation of Rs.13,80,400/- from the date of claim petition till the date of realisation. 9. Now, questioning the quantum of compensation awarded by the Tribunal, the present appeal had been filed by the claimants seeking enhancement of the compensation amount.

10. The learned counsel for the appellants/claimants submitted that in order to calculate the compensation under the head "loss of income", the Tribunal had taken only a meagre sum of Rs.6,500/- as the monthly income of the deceased, which ultimately resulted in awarding an inadequate compensation of Rs.13,10,400/- under the said head "loss of income'. In this regard, the learned counsel appearing for the appellants/claimants submitted that the deceased was working as a Sizing Warber (labourer) in a private Mill, namely Thiruchengode Barani Sizing Mill and was receiving salary of Rs.12,200/- per month. In order to prove the salary, the Manager of the said Mill was examined as P.W.3, through whom, Ex.P-12 Salary Certificate was marked. However, the Tribunal had rejected the said document on the reasoning that in the absence of the Salary Register and Identity Card of the deceased-employee, Ex.P-12 cannot be accepted. In this context, the learned counsel for the appellants/claimants submitted that the Tribunal had fixed only a paltry sum of Rs.6,500/- as the monthly income of the deceased, which had resulted in awarding an inadequate compensation of Rs.13,10,400/- under the head "loss of income", and thus, the learned counsel for the appellants/claimants prayed this Court that by fixing a sum of Rs.12,200/- as is evident from Ex.P-12 Salary Certificate, the compensation had to be enhanced under the head "loss of dependency".

11. Per contra, the learned counsel appearing for the second respondent-Insurance Company vehemently opposed for the enhancement of the Award of theTribunal, by stating that if really the deceased had worked as a Coolie (Sizing Warber) (labourer) in the said Mill, P.W.3 would have produced all the relevant documents including the Salary Register, whereas, before the Tribunal, only Ex.P-12 Salary Certificate was marked, and therefore, the Tribunal had rejected the said Ex.P-12 and fixed a sum of Rs.6,500/- as the monthly income of the deceased and by adding 40% towards future prospects, i.e. Rs.2,600, the Tribunal arrived at a sum of Rs.9,100/- (6,500 + 2,600) per month as the monthly income of the deceased and made the calculation on that basis under the head "loss of income/dependency". Hence, according to the learned counsel appearing for the second respondent-Insurance Company, there is no need to enhance the compensation amount and thus, prayed for dismissal of the claim petition, as also the present appeal.

12. Keeping in mind the above submissions made on either side, we have carefully perused the materials available on record.

13. In the claim petition, it is the case of the appellants/claimants that the deceased was working as a labourer (Sizing Warber) in the above said private Mill and earning a sum of Rs.-28,000/-. But before the Tribunal, the claimants have marked Ex.P-12 Salary Certificate issued by the employer of the deceased, which reveals that the salary of the deceased was only Rs.12,200/-, but inspite of marking Ex.P-12, the Tribunal had rejected the said document on the reasoning that except the said Ex.P-12, no other supporting documents such as Salary Register, Identity Card of the deceased, were marked and accordingly, the Tribunal fixed a sum of Rs.6,500/- as the monthly income of the deceased. This Court is of the opinion that even in the absence of any document, considering the cost of living prevailing at the relevant point of time, a minimum sum of Rs.12,000/- p.m. is required for subsistence to carry on the livelihood of a family consisting of two minor children, parents and wife of the deceased. Therefore, we are of the opinion that by fixing a sum of Rs.12,000/- as the monthly income, the amount awarded by the Tribunal under the head "loss of income" could be enhanced.

14. Accordingly, Rs.12,000/- is fixed as the monthly income of the deceased. If 40% is added towards future prospects, the total monthly income of the deceased works out to Rs.16,800/-, out of which, 1/4 has to be deducted towards the personal expenses of the deceased, which comes to Rs.12,600/- (16,800 - 1/4 of 16,800). The annual loss of dependency works out to Rs.1,51,200 (Rs.12,600 x 12). Taking into consideration the age of the deceased at the time of accident being 32 years, the correct multiplier that has to be applied in this case is "16", and resultantly, the "loss of income" works out to Rs.24,19,200/-. Thus, the amount awarded by the Tribunal under the head "loss of income" is enhanced from Rs.13,10,.400/- to Rs.24,19,200/-.

15. Further, the Tribunal had not awarded any amount under the head "loss of love and affection" to the two minor children. Hence, it is appropriate to award Rs.25,000/- to each (2) of the minor children and if so awarded, the amount works out to Rs.50,000/-, taking into account that the two minor children have lost their father at their tender age.

16. Furthermore, the parents of the deceased have lost their son, for which, no amount is awarded by the Tribunal, Accordingly, a sum of Rs.10,000/- to each of the parents, is awarded under the head "filial compensation".

17. The amount awarded by the Tribunal under the other heads are confirmed.

18. Consequently, the break-up details of the amount now awarded by this Court and the Tribunal are as follows:

Sl.No.	Head under which the amount is awarded	Amount awarded by the Tribunal (in Rs.)	Amount awarded by this Court (in Rs.)
1	Loss of Income	13,10,400	24,19,200
2	Loss of Estate	15,000	15,000
3	Funeral expenses	15,000	15,000
4	Loss of Consortium	40,000	40,000
5	Loss of love and affection to two minor children of the deceased (25,000 x 2)	-	50,000
6	Filial compensation (10,000 x 2)	-	20,000
	Total	13,80,400	25,59,200 rounded off to Rs.25,60,000/-

19. Thus, the total amount of compensation awarded by the Tribunal is enhanced from Rs.13,80,400/- to Rs.25,60,000/-, which shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of payment. The second respondent/Insurance Company is directed to deposit the total compensation computed above, including interest and costs (if any), within a period of six weeks from the date of receipt of a copy of this judgment, after deducting the amount if any already deposited. On such deposit being made by the second respondent/Insurance Company, the appellants 1, 4 and 5/claimants 1, 4 and 5 are permitted to withdraw their respective shares with proportionate accrued interest and costs (if any), after deducting the amount, if any already withdrawn by them, before the Tribunal. The apportionment of shares shall be as fixed by the Tribunal. As far as the share of the minor claimants, namely the second and third claimants/appellants 2 and 3 are concerned, the Tribunal is directed to invest the share of the said minor claimants in any Fixed Deposit interest bearing account in any one of the Nationalised Bank, from which, the mother, being the first appellant/first claimant, is permitted to withdraw the interest accrued thereon once in three months. The said Fixed Deposit shall be renewed periodically until the minor claimants attain majority. In other respects, the Award of the Tribunal is hereby confirmed.

20. With the above enhancement of the compensation amount and the directions issued above, the Civil Miscellaneous Appeal is partly allowed. No costs.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

cs

To

1. The Additional District Judge,
Motor Accident Claims Tribunal,
Namakkal.

2. The Section Officer,
V.R.Section, High Court, Madras.

+1cc to Mr.C.Thangaraju, Advocate SR.No.31470

+1cc to Mr.S.Arun Kumar, Advocate SR.No.31624

C.M.A.No.3824 of 2019

NRJK(CO)
GMY(26/08/2021)