IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.3658 of 2019

1.Sagunthala
2.Perumal

..Appellants

Vs.

1.Bakkiyam

2.The Manager,
United India Insurance Company Limited,
Branch Office No.5-B/11, SBI Upstairs,
Salem Road, Rasipuram,
Namakkal District - 637 408

..Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 18.08.2018 passed in M.C.O.P.No.459 of 2015 on the file of Motor Accidents Claims Tribunal / Principal District Judge, Namakkal.

For Appellants : Mr.C.Thangaraju
For Respondents: Mr.C.Paranthaman [For R2]

J U D G M E N T

The Civil Miscellaneous Appeal is filed against the judgment and decree dated 18.08.2018 passed in M.C.O.P.No.459 of 2015 on the file of the Motor Accidents Claims Tribunal, Principal District Judge, Namakkal.

2. The Civil Miscellaneous Appeal on hand is filed, seeking enhancement of compensation as the appellants are of an opinion that the compensation awarded by the Motor Accident Claims Tribunal is not a just compensation and therefore, the appeal is filed.

3. The accident occurred on 08.03.2015 at about 3.30 p.m at Namakkal Town Bazaar Main Road and near Sengelineer Pillayar Kovil. The deceased was aged about 23 years at the time of accident and he was working as a Coolie. Due to the accident, he

sustained grievous injuries in his head and further, suffered multiple injuries. He was admitted in the hospital and died on 14.03.2015. The father and mother are the claimants before the Tribunal and the Claim Petition is filed, seeking the compensation of a sum of Rs.30,00,000/-. The Claim was contested by the United India Insurance company and the Tribunal adjudicated the issues with reference to the documents as well as the evidences produced by the respective parties. Even as per the Claim petition, the deceased Subramani @ Subramaniam was hale and healthy and at the time of accident, he was aged about 23 years and was earning a sum of Rs.15,000/- per month. He was the sole breadwinner of his family and the claimants were the Dependants of the deceased. The Tribunal with reference to the negligence, considered the copy of the F.I.R/Ex.P1 and the other evidences. P.W.3, an important witness, deposed in his Chief Examination that the Bus Driver was driving the bus in a rash and negligent manner and the deposition of P.W.3 was cogent and the facts were narrated in a clear manner. Based on the F.I.R/Ex.P1 and the evidence of ocular witness P.W.3, the Tribunal without any hesitation, arrived a conclusion that the accident occurred due to the rash and negligent driving of the driver of the bus bearing Registration No.TN 28 AX 3747.

4. As far as the liability is concerned, the Insurance company as well as the owner of the vehicle were held liable and the Tribunal made a finding that both are jointly and severely liable to pay compensation to the claimants. Regarding the quantum of compensation is concerned, the Tribunal fixed the income of the deceased as Rs.6,000/-. The Tribunal has taken the monthly income of the deceased as Rs.6,000/-, which is lesser than that of the income stated in the Claim Petition.

5. The learned counsel appearing on behalf of the appellants mainly contended that the Tribunal has taken the meagre amount of Rs.6,000/- as monthly income, which is erroneous and the deceased was aged about 23 years at the time of accident and therefore, the future prospects should be 40%. Further, the Tribunal has committed an error in not awarding the compensation towards Love and Affection for all the claimants and therefore, the compensation awarded by the Tribunal is improper and to be enhanced.

6. The learned counsel appearing on behalf of the 2nd respondent/Insurance Company contested the points by stating that the Tribunal, in the absence of establishing the correct income of the deceased, arrived a conclusion that the monthly income would be around Rs.6,000/-. No salary certificate was produced by the claimants and in the absence of any clinching evidence regarding monthly income, no interference is required

as far as the fixation of monthly income by the Tribunal is concerned.

7. This Court is of the considered opinion that even assuming the deceased was a Coolie, the fact remains that the accident occurred during the year 2015. Thus, the monthly income of a sum of Rs.6,000/- for a Coolie in the year 2015 is undoubtedly lesser than that of the prevailing situation during the relevant point of time. Thus, this Court has no hesitation in arriving a conclusion that the Tribunal has erroneously fixed the monthly income of the deceased person as Rs.6,000/- and as a young Coolie, he would have earned higher income even prior to the accident. Under these circumstances, the Courts also repeatedly held that a reasonable amount is to be fixed as monthly income, considering the prevailing situation during the relevant point of time when the accident occurred.

8. In the present case, the accident occurred on 08.03.2015 and the deceased was a young person and sole breadwinner of the family. This being the factum, it would be appropriate that a sum of Rs.9,000/-(Rupees Nine Thousand only) is fixed as monthly income for the purpose of calculating the compensation. If the income of the deceased is fixed as Rs.9,000/-, then 40% future prospects is to be added. Thus, this Court is inclined to enhance the monthly income fixed by the Tribunal from a sum of Rs.6,000/- to a sum of Rs.9,000/- and accordingly, the compensation is to be calculated by using Multiplier-18. Thus, the calculation would be 9,000 + [9,000 * 40/100] = 9000+3600 = 12,600/-.

9. Half amount is to be deducted towards personal expenses and accordingly, the income is to be fixed as Rs.6,300/- and the Multiplier-18 is to be adopted. Accordingly, the award of the Tribunal is to be modified and the claimants are entitled for enhanced compensation as detailed hereunder:

Total loss of income (6300x12x18)	:	13,60,800.00
Medical Expenses	:	3,99,807.00
Funeral Expenses	:	15,000.00
Loss of Estate	:	15,000.00
Parental Consortium to mother and father each at Rs.40000/-	:	80,000.00

Transport Expenses	:	10,000.00
Total	:	18,80,607.00

10. The total amount of compensation payable to the appellants/claimants is a sum of Rs.18,80,607/-(Rupees Eighteen Lakh Eighty Thousand Six Hundred and Seven only).

11. The 2nd respondent/ Insurance Company is directed to deposit the entire award amount along with the interest at the rate of 7.5% per annum from the date of filing till the date of deposit, if not already deposited, within a period of twelve weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants/claimants are permitted to withdraw the enhanced compensation of a sum of Rs.18,80,607/- awarded by this Court along with the interest by filing an appropriate application before the Tribunal and the payments are to be made through RTGS. The appellants/claimants are liable to pay additional court fee for the enhanced compensation amount.

12. In this view of the matter, the judgment and decree dated 18.08.2018 passed in M.C.O.P.No.459 of 2015 is modified and the award of compensation granted by the Tribunal stands enhanced. Consequently, the Civil Miscellaneous Appeal in C.M.A.No.3658 of 2019 stands allowed in part. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

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

2.The Section Officer,
V.R Section,
High Court, Madras.
+2 Ccs to Mr.C.Paranthaman, Advocate sr 25612.

C.M.A.No.3658 of 2019

SSV(CO)
SP(05/01/2021)