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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.11.2020

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

C.M.A.No. 3741 of 2019

1. Soniyagandhi,
W/o. Late Rajan

2. Minor Santhan,
S/o. Late Rajan

3. Minor Hema,
D/o. Late Rajan

Minors 2 and 3 represented
by their mother / natural
guardian, 1st appellant
Soniya Gandhi

4. Vasanthi,
W/o. Muniasamy

5. Kala,
D/o. Muniasamy

6. Rajkumar,
S/o. Muniasamy

All are residing at
No.51, Jothimadam,
Lakshmi Theatre backside,
Gudiyattam, Vellore Dt. ... Appellants/Claimants

Vs.

1. Vivekanandan,
S/o. Margabandu,
No.40, Congress House Road,
Pudupet, Gudiyattam,
Vellore District.

2. The New India Assurance Co. Ltd.,
Officers Line,
Vellore. ... Respondents/Respondents



PRAYER:- Civil Miscellaneous Appeal preferred under Section 173 of Motor Vehicles Act against the judgment and decree in M.C.O.P. No.13 of 2016, dated 12.04.2019 on the file of the Motor Accident Claims Tribunal/Subordinate Court at Gudiyattam, Vellore District.

For Appellants : Mr.R.Prabakar

For Respondents : R1 - no appearance

Mrs.A.Salomi for
Mr.C.Rameshbabu
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. It is a case of fatal accident. The deceased by name Rajan, the 1st claimant is his wife, 2nd and 3rd claimants are minor son and daughter, 4th claimant is mother and 5th and 6th claimants are sister and brother of deceased. According to the claimants, on 25.12.2015, at about 08.30 p.m., while the deceased riding his two wheeler at Gudiyattam to Pernambut road, near Kannigapuram bus stop, a Mahendra Xylo car bearing Regn. No.TN-23-BV-9200 driven by its driver, owned by the 1st respondent, which was insured with the 2nd respondent, came in rash and negligent manner and dashed against the two wheeler, in which the deceased has sustained grievous injuries. Immediately, he was taken to Government hospital, but on the way, he died. At the time of accident, the deceased was 35 years old, he was working as a medical representative in a private company, and earning a sum of Rs.50,000/- per month, he was the sole breadwinner of the family and the entire family depend upon him. Hence, claiming compensation of Rs.50 lakhs, the claim petition has been filed by the appellants/claimants.

3. The 1st respondent/owner of the vehicle was remained exparte. The 2nd respondent Insurance Company contested the claim petition on the ground that, there is no negligence on the part of driver of a car and the accident was taken place only due to the rash and negligent driving of the deceased. Hence, the respondents are not liable to pay any compensation. That apart, there is no proof produced for the monthly income of deceased and the compensation claimed by the appellants was speculative and excessive.



4. In order to prove their claim, the Appellants/claimants examined 3 witnesses and marked as many as 37 exhibits. On the side of the respondents, no witness was examined and the death certificate of deceased was marked as Ex.R1.

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. At the time of accident, the insurance policy was in force. Hence, the 2nd respondent is liable to pay the compensation. In respect of quantum of compensation is concerned, the monthly income of deceased was fixed at Rs.11,200/- based on the evidence of P.W.3, who is employer of deceased and added 40% of monthly income towards future prospects. After deducting 1/4th towards personal expenses, the Tribunal has arrived at the notional monthly income of deceased as Rs.15,680/- and awarded a sum of Rs.22,57,920/- towards loss of dependency. That apart, the Tribunal has awarded a sum of Rs.40,000/- towards loss of consortium, a sum of Rs.15,000/- towards funeral expenses, and a sum of Rs.15,000/- towards loss of estate. Totally, a sum of Rs.23,27,920/- towards compensation was awarded by the Tribunal. Not satisfied with the same, the claimants have filed this Civil Miscellaneous Appeal before this Court.

6. The learned counsel appearing for appellants would submit that the deceased was a permanent employee in a pharmaceutical company. Even though, at the time of accident, he was on probation, as per the guideline issued by the Hon'ble Supreme Court of India, in the case of National Insurance CO.Ltd., /vs/ Pranay Sethi and others reported in 2017 (16) SCC 680, and on considering the age of deceased as 35 years, 50% of actual salary should be added as future prospects. Whereas, the Tribunal has awarded only 40%. That apart, wife, children and mother are entitled for loss of consortium of Rs.40,000/- each. But, the Tribunal has only granted a sum of Rs.40,000/-. In the said circumstances, the appellants are seeking enhancement of compensation.

7. The learned counsel appearing for 2nd respondent insurance company contended that the deceased was working as a medical representative, it is not a permanent employment, and as per the judgment of Hon'ble Supreme Court of India, the Tribunal has rightly fixed 40% of monthly income towards future prospects. Hence, there is no irregularity in it. That apart, the learned counsel also admitted that towards loss of parental consortium and filial consortium, the claimants 2 to 4 are entitled for Rs.40,000/- each and on the other heads, the



Tribunal has awarded just and fair compensation. Therefore, there is no reason to interfere in it.

8. I have considered the rival submissions and perused the materials available on records.

9. At the time of accident, the deceased was employed in one Jagdale Life Sciences Private Limited, Bangalore, the appointment order has been marked as Ex.P17. Ex.P18 to 20 have been marked to prove the monthly salary of the deceased and it would show that he has got a monthly salary of Rs.12,500/- at the time of accident. P.W.3, the Deputy General Manager of the company has been examined to support the same. The Tribunal, after deducting the income tax from the net salary, has arrived the monthly income of deceased as Rs.11,194/-, which was rounded up as Rs.11,200/- and there is no dispute about the same. So far as adding future prospects is concerned, from the evidences available on record, it could be seen that he was a permanent employee in a private company, and at the time of accident, he was on probation, on completion of probation period, he would continue to work as a permanent employee. As per the dictum laid down by Hon'ble Supreme Court of India in the case of National Insurance CO.Ltd., /vs/ Pranay Sethi and others reported in 2017 (16) SCC 680, if the deceased was in a permanent job, and below the age of 40 years, 50% of actual salary should be added as future prospects. In the instant case, the deceased was in permanent employment and he is aged about 35 years, 50% of monthly income should be added towards future prospects. Therefore, the notional monthly income of deceased can be arrived at Rs.16,800/-. As there are six claimants, 1/4th of his income should be deducted towards personal expenses. Thus, the notional monthly of deceased would be Rs.12,600/- and applying multiplier of 16, the loss of dependency comes to Rs.24,19,200/- (Rs.12,600 x 12 x 16).

10. So far as loss of consortium is concerned, the 1st appellant, who is wife of deceased, she is entitled for a sum of Rs.40,000/- as spouse consortium, 2nd and 3rd appellants, who are minor children, they are entitled for a sum of Rs.40,000/- towards parental consortium, 4th appellant is a mother, she is also entitled to get a sum of Rs.40,000/- towards filial consortium. However, the Tribunal has awarded only a sum of Rs.40,000/- towards loss of consortium, which is also liable to be modified. The other appellants viz., 5th and 6th appellants, they are married brother and sister, they are not entitled for any consortium. In the said circumstances, the award passed by the Tribunal is modified as follows :-



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Sl. No.	Headings	Amount Awarded by the Tribunal Rs.	Amount awarded by this Court	Award confirmed or enhanced
1	Loss of dependency	22,57,920	24,19,200	enhanced
2	Loss of consortium to the 1 st appellant	40,000	40,000	confirmed
3	Loss of parental consortium for 2 nd and 3 rd Appellants	Nil	80,000	granted
4	Loss of filial consortium to the 4 th appellant	Nil	40,000	granted
5	Funeral expenses	15,000	15,000	confirmed
6	Loss of estate	15,000	15,000	confirmed
	Total	23,27,920	26,09,200	enhanced

Thus, the appellants are entitled to get a sum of Rs.26,09,200/- towards compensation instead of Rs.23,27,920/- awarded by the Tribunal.

11. So far as apportionment is concerned, considering the fact that two minor children, aged about 3 and 4 years at the time of accident, in the interest of minors, entire enhanced compensation amount viz., Rs.2,81,280/- is to be divided equally by 2nd and 3rd appellants, viz., minor daughter and son of deceased.

12. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.23,27,920/- is hereby enhanced to Rs.26,09,200/- 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. As far as the share of minor appellants viz., 2nd and 3rd appellants are concerned, the same shall be deposited in any nationalised bank in any interest bearing fixed deposit scheme, until the minors attain majority and the interest thereon shall be withdrawn by the 1st appellant, the mother, once in three months. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

rpp
To

The Subordinate Judge,
Motor Accidents Claims Tribunal,
Gudiyattam, Vellore District.

Copy to

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

+1cc to Mr.R.Prabakar, Advocate Sr.37843
+1cc to Mr.C.Ramesh Babu, Advocate Sr.37812

C.M.A.No.3741 of 2019

BS(CO)
srg 01/09/2021