IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.09.2020

CORAM

THE HON'BLE MR.JUSTICE R.MAHADEVAN

Civil Miscellaneous Appeal No.1372 of 2017

1. Smt. Latha
2. Naveen
3. Nandhini
Maiyli (since deceased) .. Appellants / claimants
..Deceased/4th Respondent

Vs.

1. S.Uma Maheswari

2. Reliance General Insurance Company Ltd.
Sri Lakshmi Complex, 1st Floor,
Bharathi Street, Omalur Main Road,
Swarnapuri Salem 636 004 ... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act 1988 against the Judgment and Decree dated 19.02.2016 made in MCOP.No.980 of 2011 on the file of the Motor Accidents Claims Tribunal, Sub Court, Sankari.

For Appellants : Mr. A.R.Suresh

For Respondent No.1 : No appearance

For Respondent No.2 : Ms. C.Bhuvanasundari

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the claimants / appellants challenging the findings rendered by the Motor Accident Claims Tribunal, Sub Court, Sankari, in awarding the total compensation of Rs.15,97,000/-payable to the claimants / appellants by the second respondent.

2. The case of the claimants / appellants is that on 11.06.2011 when the deceased Dhamodharan was riding his two wheeler Hero Honda Splendor bearing Reg.No.TN30-AY-9810 on the left side of Salem to Dharmapuri National Highway, near Kuthirai Kuthee Palam, an Ashok Leyland Lorry bearing Registration No.TN-56-B-0703 came from the backside in a rash and negligent manner

and dashed against the deceased. Due to the accident, Dhamodharan succumbed to the injuries. Claiming that the accident had happened only due to the rash and negligent driving of the driver of the Lorry, the Legal Representatives of Dhamodharan / claimants / appellants have filed a claim petition claiming a sum of Rs.30,00,000/- as total compensation.

3. The claim was resisted by the Insurer of the Lorry / second respondent herein, by denying the age, occupation, monthly income of the deceased, apart from denying the manner of accident. It was also stated by the Insurer that the deceased had no driving licence at the time of accident.

4.The Tribunal, by taking into consideration the evidence and documents on record, more particularly, the evidence of P.W.1 as well Exs.P-1-FIR, P-3-MVI Report and P-5-Rough sketch and P-6-observation mahazar, has fixed the negligence on the driver of the Lorry and ultimately fastened the liability on the Insurer / second respondent and quantified the total compensation at Rs.9,58,200/- under pecuniary and non-pecuniary damages. Claiming the same as lesser, the claimants / appellants are before this Court.

5. The learned counsel for the claimants / appellants submitted that the amount awarded under each and every heads by the Tribunal is too low, which needs considerable increase; having accepted the source of income through Hotel Business of the deceased, the Tribunal has conveniently disbelieved the version with regard to the income of Rs.15,000/- per month; the Tribunal has not awarded any amount towards loss of expectation of life, loss of estate and loss of guidance; and in any event, the total amount of compensation awarded by the Tribunal is too low, which needs considerable increase.

6.On the other hand, the learned counsel for the second respondent / Insurer of the lorry submitted that the claimants / appellants have not proved by way of proper evidence that the deceased was running hotel and earning Rs.15,000/-; though Ex.P-12-Hotel Property Tax Receipt was filed by the claimants to show that the deceased was running hotel, either Ex.P-12 or the evidence of P.W.1 did not establish that the deceased was earning Rs.15,000/- and more per month and hence in the absence of the same, the Tribunal has taken Rs.6,000/- as monthly income, added 50% towards future prospects, adopted the multiplier of 15 and ultimately awarded Rs.12,15,000/- under the head loss of dependency; when such being the case, it cannot be contended that the income fixed by the Tribunal is low; further, the Tribunal has awarded maximum amount of Rs.1,00,000/- and Rs.2,50,000/- towards loss of consortium and loss of love and affection, which are exorbitant, since during the year 2010, very lesser amounts were awarded under those heads; and in any event, the quantum arrived at by the Tribunal cannot be said to be low.

7. Heard both sides and perused the materials available on record.

8.At the outset, it has to be pointed out that neither oral nor documentary evidence was marked on the side of the respondents herein to prove that the accident had not happened as alleged by the appellants. Further basing reliance on the evidence of P.W.1 and Exs.P-1-FIR, P-9-Charge sheet and P-10 and P-13-driving licences of the deceased and accused and more particularly, the evidence of P.W.2-eyewitness to the accident, the Tribunal by way of its findings has fastened the liability on the respondents herein jointly and severally and hence the said findings are confirmed as such.

9. As far as the quantum of compensation awarded by the Tribunal is concerned, the Tribunal, basing reliance on the oral testimony of P.W.1 and in the absence of any document about the monthly income of the deceased, has taken Rs.6,000/- and the Tribunal has added 50% towards future prospective increase in income, and ultimately, has taken Rs.9,000/- as monthly income of the deceased. Though the observation of the Tribunal was to the said effect that it has failed to consider, P.W.1 (first appellant herein) has let in evidence and marked Ex.P-12-Professional Tax Receipt issued by the Town Panchayat, establishing the factum of running a hotel by the deceased in the name and style of "Latha Hotel" on National Highway between Salem and Bangalore, this Court is of the view that the Tribunal, having accepted the source of income through hotel business and having accepted that P.W.1 and deceased being the owners of the small hotel, ought to have fixed the monthly income at Rs.8,000/-. Since the deceased was aged 43 years at the time of accident, the future prospective increase in income should be 50%, the multiplier to be adopted is 15 and the personal and living expenses to be deducted is $1/4^{th}$ as the dependants are four in number, which the Tribunal has rightly taken into consideration. If the said yardstick is adopted, the loss of dependency would be Rs.16,20,000/- ([8,000/- + 50%] x 12 x 15 x ¾).

10. As far as the amounts awarded by the Tribunal under the heads loss of consortium and loss of love and affection at Rs.1,00,000/- and Rs.2,50,000/- are concerned, though they are awarded based on the settled principles of law, the Tribunal has fixed the same at the maximum level. In legal parlance, consortium is the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual

relations with his mate. For the loss of companionship, love, care and protection, etc. the spouse has to be compensated appropriately. However, since the legal heirs are otherwise adequately compensated for the pecuniary loss, it would not be proper to award a major amount under this head. Hence, this Court is of the view that awarding a sum of Rs.40,000/- in the place of Rs.1,00,000/- under the head loss of consortium would be reasonable and it is awarded accordingly. Similarly, towards loss of love and affection, the Tribunal has awarded a sum of Rs.2,00,000/- to the children and Rs.50,000/- to the mother, which in the considered view of this Court, is on the higher side and needs significant decrease and hence, awarding a sum of Rs.40,000/- each to the children (appellants 2 and 3) would be reasonable and it is awarded accordingly. Since the fourth appellant / mother is dead, the sum of Rs.50,000/- awarded under this head is hereby deleted.

11. The amounts awarded towards funeral expenses and Travelling expenses at Rs.25,000/- and Rs.7,000/- though seem to be slightly on the higher side, since the Tribunal has not awarded any sum towards loss to estate that would offset the amount awarded under those heads and hence the amounts awarded under those two heads are confirmed as such. In fine, the re-structured total amount of compensation, item-wise, would be thus:

Loss of dependency -	Rs.16,20,000/-
Loss of consortium to the first appellant -	Rs. 40,000/-
Loss of love and affection to appellants 2 and 3-	Rs.80,000/-
Funeral expenses -	Rs. 25,000/-
Travelling expenses -	Rs. 7,000/-
Total -	Rs.17,72,000/-

12. In the result, this Civil Miscellaneous Appeal filed by the claimants / appellants is partly-allowed, by enhancing the total amount of compensation from Rs.15,97,000/- to Rs.17,72,000/-, along with interest at the rate of 7.5% per annum from the date of filing of the petition till the date of deposit, which shall be deposited by the second respondent / Insurer, less the amount already deposited, if any, within a period of eight weeks, from the date of receipt of a copy of this judgment.

13. At this juncture, the learned counsel for the appellants submitted that all the minor claimants / appellants have become majors.

14. In view of the said submission, upon such deposit being made by the Insurer, the Tribunal shall transfer the respective

shares of the claimants / appellants to their Savings Bank Accounts, within a period of one week of the deposit made by the second respondent, through RTGS, as per the ratio of apportionment made by the Claims Tribunal. The share of the fourth claimant / fourth appellant / Smt. Maiyeli shall be equally distributed among the appellants 1 to 3, since it is reported that appellants 1 to 3 are her legal heirs and pending this appeal, fourth appellant died.

15.The appellants shall pay necessary court fees for the enhanced compensation amount before receiving the copy of this judgment. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

srk
To
1.Motor Accidents Claims Tribunal,
Sub Court, Sankari.

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

+1 cc to M/s.A.R.Suresh, Advocate Sr.No. 30820

JP(CO)
RMP(17/05/2021)