IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.11.2020
PRONOUNCED ON : 10.12.2020

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

and

THE HONOURABLE MR.JUSTICE C.SARAVANAN

Civil Miscellaneous Appeal No.4333 of 2019

(Through Video Conferencing)

1.K.Vasantha
2.S.Krishnan ...Appellants/Petitioner

vs.

1.R.Gopinath

2.Sriram General Insurance Co. Ltd.,
1st Floor, Plot No.5,
Ramachandran Street,Saravana Nagar,
Seevaram, Perungudi,
Chennai 600 096. ...Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 18.07.2019 made in M.C.O.P.No.3899 of 2018, on the file of the Motor Accident Claims Tribunal (Chief Judge, Court of Small Causes) Chennai.

For Appellants : M/s.Ramya V.Rao

For R1 : No Appearance

For R2 : Mr.K.Poomalai

J U D G M E N T

C. SARAVANAN,J.

The claimants are the appellants in this Civil Miscellaneous Appeal. They are aggrieved by the impugned Judgment and Decree dated 18.07.2019 passed by the Motor Accidents Claims Tribunal, (Chief Judge, Court of Small Causes), Chennai in M.C.O.P.No.3899 of 2018.

2. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.38,35,000/- as compensation together with interest at 7.5% per annum from the date of filing of the claim petition till the date of deposit and costs, to the appellants/claimants.

3. The appellants are the parents of the deceased K.Nandakumar who met with an accident on 24.05.2018. The brief facts of the case are that on 24.05.2018, the deceased K.Nandhakumar was proceeding in motorcycle bearing registration No.TN-07-CC-7445 at Nemilicherry, Nanmangalam Main Road. At that time, a mini water tank lorry bearing registration No.TN-04-7759 allegedly came from the opposite direction driven by its driver in a rash and negligent manner hit the deceased motorcycle, as a result of which, the deceased sustained grievous injuries and died. Therefore, the claim petition was filed by the appellants for compensation.

4. In the claim petition, the Tribunal has awarded the aforesaid amount of compensation of Rs.38,35,000/- as against the total claim amount of 1,00,00,000/- taking into account a notional income of the deceased as Rs.25,000/- per month. The Tribunal has awarded the compensation under the following heads:-

Heads and Calculation	Amount
Towards loss of future dependency (25,000 x 12 x 18 x ½ + 40%)	Rs.37,80,000/-
Towards funeral expenses	Rs. 15,000/-
Towards Loss of Love and Affection Rs.20,000/- each (20,000 x 2)	Rs. 40,000/-
Total	Rs.38,35,000/-

5. Aggrieved by the same, the appellants/claimants have filed this Civil Miscellaneous Petition and seek for enhancement of compensation by another sum of Rs.26,00,000/-.

6. It is the contention of the learned counsel for the appellants that the Tribunal while arriving at the calculation of the aforesaid compensation has concluded that the deceased would have been earned a sum of Rs.25,000/- per month. It is the case of the appellants that the Tribunal ought to have considered Ex.P.21 which is the salary slip of the deceased for the period from February 2018 to May 2018 and the evidence of P.W.3, Assistant Manager - HR, Siemens Gamesa Renewable Power Private Ltd. who was the employer of the deceased.

7. It is therefore submitted that the Tribunal erred in restricting the income of the deceased to Rs.25,000/- per month as against a sum of Rs.36,000/- per month as was claimed in the claim petition. The learned counsel for the appellants further submitted that though the employer had paid only Rs.20,439/- for 24 days of work during the month of May, 2018, the Tribunal has not justified in awarding the restricted compensation by considering the total income of the deceased as Rs.25,000/- per month.

8. The learned counsel for the 2nd respondent Insurance Company submitted that the impugned Judgment and the Decree passed by the Tribunal was well reasoned and requires no interference.

9. We have considered the arguments advanced by the learned counsel for the appellants and the 2nd respondent Insurance Company. We have perused the evidence on record and the impugned Judgment and Decree passed by the Tribunal.

10. There is no dispute regarding the accident and the involvement of the vehicle. The deceased was aged about 23 years at the time of the accident. He had been recruited by his employer, namely, Siemens Gamesa Renewable Power Pvt. Ltd., (Formerly Gamesa Renewable Private Limited) in the year 2016 as a Graduate Engineer Trainee. He was to undergo the training for a period of one year. Thereafter, on successful completion of training, his employment was regularised as Engineer - Purchase with effect from 1st April, 2018 as is evident from Ex.P20 dated 01.04.2018 Copy of confirmation of Appointment.

11. As per Ex.P10, the revised pay structure of the deceased was Rs.3,60,000/-, i.e. Rs.30,000/- per month which was with effect from April, 2018. The employer however paid only for 24 days during the month of May, 2018 amounting to Rs.20,439/-. Then the Tribunal has not considered the retiral benefits and the superannuation amount of Rs.1,800/- each which were to be credited to the deceased benefits and was to be paid on his retirement had he lived.

12. From a reading of Ex.P20 which was marked by the P.W3 and Ex.P.21 and Ex.P.10, it is evident that the monthly salary of the deceased was Rs.30,000/- per month as he had successfully completed his training. Therefore, in our view, the Tribunal ought not to have considered a restricted notional income of Rs.25,000/- as against a sum of Rs.30,000/-. It was the revised income of the deceased as is evident from Ex.P.20 and Ex.P.10 which was marked by the PW3. Therefore, we are inclined to consider the monthly income of the eceased as Rs.30,000/- per month for the purpose of the computation of the

compensation.

13. The addition of future prospects, deduction of personal expenses and the multiplier applied by the Tribunal in the calculation appears to be correct. The compensation awarded towards loss of love and affection appears to be otherwise low and the same is enhanced under the head of loss of filial consortium as per the decision of the Hon'ble Supreme Court in Magma General Insurance Company Ltd. Vs. Nanuram @ Chuhru Ram and Others, (2018) 18 SCC 130.

14. Therefore, the compensation of Rs.38,35,000/- awarded by the Tribunal is re-quantified as follows:-

Heads and Calculation	Amount
Loss of earning capacity:- Monthly Income : Rs.30,000/- Add: Future Prospects at 40 % (30,000 x 40/100) : Rs.12,000/- ---------------- : Rs.42,000/- Less: Personal Expenses 1/2nd (42,000 x 1/2) : Rs.21,000/- ---------------- : Rs.21,000/- Annual Contribution to the family (21,000 x 12) : Rs.2,52,000/- Multiplier 18 (2,52,000 x 18) : Rs.45,36,000/-	Rs.45,36,000/-
Loss of filial consortium to the appellants (40,000 x 2)	Rs. 80,000/-
Funeral Expenses	Rs. 15,000/-
Total	Rs.46,31,000/-

Therefore, the compensation of Rs.38,35,000/- awarded by the Tribunal is enhanced to Rs.46,31,000/-.

15. By an order dated 12.11.2019 passed in C.M.P.No.23600 of 2019 in C.M.A.Sr.133782 of 2019, this Court has permitted the appellant to pay the court fee of Rs.5,375/- instead of Rs.25,375/-. The operative portion of the order reads as follows:-

> 3. It is the case of the petitioners that they have not withdrawn any amount till date and they are unable to pay the Court fee payable for entertaining the Civil Miscellaneous Appeal. Petitioners are now ready and willing to pay a sum of Rs.5,375/- as Court fee and also undertake to pay the balance sum of Rs.20,000/- immediately after disposal of the present Civil Miscellaneous Appeal.
>
> 4. Having regard to the above facts, the petitioners are permitted to pay the Court fee of Rs.5,375/- instead of Rs.25,375/-. However, it is made clear that as and when the Appeal is disposed of, petitioners have to pay the balance Court fee payable by them.

16. Since this appeal is being disposed of, the appellants are directed to deposit the deficit Court fee on the enhanced amount of compensation now being award and file a proof of payment before the Tribunal to withdraw the compensation. The Tribunal is directed to verify the same before allowing the appellants to withdraw their compensation.

17. Though the Tribunal has directed the respondents to deposit the compensation jointly or severally, we are of the view that it is the 2nd respondent Insurance Company which is liable to pay the compensation to the appellants as the 2nd respondent Insurance Company has contracted a contract of indemnity to indemnify the 1st respondent against any liability that may be fastened against him under the Motor Vehicles Act, 1988.

18. Therefore, the 2nd respondent Insurance is directed to deposit a sum of 46,31,000/- together with interest at 7.5% per annum from the date of filing of the claim petition till the date of deposit and costs, less any amount already deposited, within a period of six weeks from the date of receipt of a copy of this Judgment.

19. On such deposit, the appellants are permitted to withdraw the same together with interest and costs equally, less any amount already withdrawn, by filing suitable applications.

20. Accordingly, this Civil Miscellaneous Appeal is partly allowed. No cost.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

kkd
To:

The Motor Accidents Claims Tribunal,
Chief Judge, Court of Small Causes
Chennai

+1 CC to M/s. Poomalai, Advocate sr 40176.

C.M.A.No.4333 of 2019

CNR(CO)
SP(28/12/2020)