

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.08.2020

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.3112 of 2017

1. Sornam
2. Minor Prabhakaran
3. Minor Ananthi
4. Perambaye

(Minor 2nd and 3rd appellants represented
by their natural friend and mother 1st appellant)

... Appellants/Petitioners

vs.

1. Manoharan,
M.M.Transport, 1st floor,
CDEA Buildings,
Willingdon Island,
Cochin - 682 003, Kerala.
2. Bharti AXA General Insurance Company Limited,
No.5/6th Floor, Modayil Centre Point,
Pallimukku, MG Road, Kochi - 682 035.

(R1 set exparte before the Tribunal)

... Respondents/Respondents

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 20.04.2017 and made in M.A.C.T.O.P.No.2605/2012 on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

For Appellants : M/s. M.Malar

For R1 : Exparte

For R2 : Mr.K.Poomalai

JUDGMENT

This appeal is preferred by the appellants/claimants against the award of a sum of Rs.17,41,000/- towards compensation for the death of one Arunachalam, who died in a motor vehicle accident.

2.The case in brief, is as follows:

On the fateful day, ie. on 20.02.2011, at about 16.30 hours, the deceased Arunachalam was riding the bicycle on the Trichy to Chennai National Highways NH 45, near Mamundur junction, Villupuram District. At that time, the lorry bearing Reg.No.TN 28 K 9384 belonging to the first respondent and insured with the second respondent Insurance Company, driven by its driver in a rash and negligent manner, hit the cyclist from behind. As a result of the same, the deceased sustained fatal injuries and died. The wife, son, daughter and mother of the deceased, being the surviving legal heirs, filed a claim petition before the Tribunal, seeking compensation of Rs.25,00,000/-. On consideration of the materials and evidence available on record, the Tribunal has awarded a total compensation of Rs.17,41,000/- with interest at the rate of 7.5% per annum from the date of petition. Feeling aggrieved and being dissatisfied with the quantum of compensation so awarded, the appellants are before this Court with the present appeal seeking enhancement of the same.

3.The learned counsel for the appellants has submitted that the Tribunal has erred in awarding a sum of Rs.17,41,000/- as against the claim of Rs.25,00,000/- made by the appellants / claimants. The learned counsel further submitted that when the deceased was earning Rs.500/- per day as a Mason, the Tribunal has erred in taking his income only at Rs.6,500/- per month. It is also submitted that the amounts awarded towards other heads are on the lower side and hence, the compensation awarded by the Tribunal needs to be enhanced substantially.

4.Per contra, the learned counsel for the second respondent/ Insurance Company submitted that after properly analysing the materials and evidence, the Tribunal has awarded the compensation, which is just and reasonable and hence, the same does not require any interference in the hands of this Court.

5.Heard the learned counsel on either side and perused the materials available on record.

6.The wife of the deceased was examined as P.W.1, who deposed in her evidence that the deceased was aged about 39 years and was earning Rs.500/- per day as a Mason. To prove the avocation and income of the deceased, the appellants have not filed any documents. In the absence of any material evidence, the Tribunal fixed a sum of Rs.6,500/- per month as the notional income of the deceased, added 50% of the amount towards future prospects and out of the resultant amount, deducted 1/4th of the amount towards personal expenses of the deceased, adopted 15 multiplier and awarded a sum of Rs.13,16,340/- towards loss of pecuniary benefits. The accident occurred in the year 2011. Taking note of the year of accident, this Court is of the view

that fixing a sum of Rs.8,000/- as monthly income of the deceased, would be proper. All other aspects adopted by the Tribunal in respect of arriving at the loss of pecuniary benefits, needs no interference. If a sum of Rs.8,000/- is fixed as monthly income, the loss of pecuniary benefits works out to Rs.16,20,000/- ([Rs.8,000 + 4,000] x 12 x 15 x 1/4). Accordingly, the compensation awarded by the Tribunal towards loss of Pecuniary Benefits stands modified to Rs.16,20,000/-. Further, this Court is of the considered view that the amounts awarded towards other heads are reasonable and justifiable and hence the same are confirmed.

7.The details of the modified compensation are as follows:

HEADS	AMOUNT (Rs.)
Loss Pecuniary Benefits	16,20,000/-
Loss of Love and Affection (to the appellants 2to4 each Rs.1,00,000/-)	3,00,000/-
Loss of Consortium	1,00,000/-
Funeral expenses	25,000/-

TOTAL.....	20,45,000/- =====

8.In the result, the Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.17,41,000/- is hereby enhanced to Rs.20,45,000/- with interest at the rate of 7.5% per annum from the date of petition. No costs. The second respondent/ Insurance Company is directed to deposit the modified amount of compensation, as ordered above, along with interest and costs, after deducting the amount if any, already deposited, within a period of eight weeks from the date of receipt of a copy of this judgment. During the time of filing the claim petition, ie., in the year 2012, the appellants 2 & 3 were 17 and 16 years old. Now, they would have attained majority. Hence, on such deposit being made, the appellants are permitted to withdraw their respective shares as per the ratio of apportionment made by the Tribunal, on making proper application. It is made clear that the appellants/claimants have to pay appropriate Court fee, before receiving the awarded amount.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1.The II Judge
The Motor Accident Claims Tribunal,
II Court of Small Causes, Chennai.

2. The Section Officer,
V.R.Section,
Madras High Court, Chennai 104.

+1 cc to M/s.M.Malar, Advocate Sr.No. 25894
+1 cc to M/s.K.Poomalai, Advocate Sr.No.26050

C.M.A.No.3112 of 2017

SSD(CO)
RMP(11/05/2021)



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