IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3403 of 2017

1.N.Aruna
2.N.Eswar Prasad ... Appellants /Petitioners

Vs.

1.K.Radhamma

2.The Oriental Insurance Co. Ltd.,
Motor Third Party Claims,
No.115 & 116, Prakasam Salai,
Broadway, Chennai 600 108. ... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 24.08.2017 made in MACT O.P.No.2201 of 2015 on the file of the Motor Accidents Claims Tribunal, Chennai, (V Small Causes Court, Chennai).

For Appellants : Mr.K.Suryanarayan

For R2 : Mr.D.Bhaskaran

R1 : Notice Served-No Appearance

J U D G M E N T

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 24.08.2017 made in M.C.O.P.No.2201 of 2015 on the file of Motor Accident Claims Tribunal, (V Small Causes Court, Chennai).

2. The appellants are the claimants in M.C.O.P.No.2201 of 2015 on the file of the Motor Accidents Claims Tribunal,(V Small Causes Court), Chennai. They filed the said claim petition claiming a sum of Rs.20,00,000/- as compensation for the death of one Giri Babu @ Giri Naidu, who died in the accident that took place on 10.10.2014.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the Auto belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said Auto to pay a sum of Rs.11,94,600/- as compensation to the appellants.

4.Not being satisfied with the quantum of the compensation awarded by the Tribunal, the appellants have come out with the present appeal seeking enhancement of compensation.

5.The learned counsel appearing for the appellants contended that the deceased was earning a sum of Rs.20,000/- per month by doing Real Estate business. The Tribunal without considering the same, fixed only a meagre sum of Rs.6,500/- per month as notional income of the deceased. The Tribunal committed error in holding that the second appellant is not a dependent of the deceased and deducted 50% towards personal expenses of the deceased instead of 1/3rd. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation. In support of his contention, the learned counsel for the appellant relied on the judgment of the Hon'ble Apex Court reported in I (2020) ACC 130 (SC) Natinal Insurance Company Limited Vs. Birender and others and para Nos.15 and 22 are extracted hereunder:

> ''15.It is thus settled by now that the legal representatives of the deceased have a right to apply for compensation. Having said that, it must necessarily follow that even the major married and earning sons of the deceased being legal representatives have a right to apply for compensation and it would be the bounden duty of the Tribunal to consider the application irrespective of the fact whether the concerned legal representative was fully dependant on the deceased and not to limit the claim towards conventional heads only. The evidence on record in the present case would suggest that the claimants were working as agricultural labourers on contract basis and were earning meagre income between Rs.1,00,000 and Rs.1,50,000/- per annum. In that sense, they were largely dependant on the earning of their mother and in fact, were staying with her, who met with an accident at the young age of 48 years.''
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> ....
>
> ....

> ''22.Considering the above, respondent Nos.1 and 2 would be entitled for compensation to be reckoned on the basis of loss of dependency, due to loss of gross salary(less tax amount, if any) of the deceased and future prospects and deduction of only one-third(1/3rd) amount towards personal expenses of the deceased. As regards the multiplier '13' applied by the Tribunal and the High Court, the same needs no interference. As a result, on the facts and in the circumstances of this case, the amount payable towards compensation will have to be recalculated on the following basis:
>
> Loss of dependency due to loss of income calculated at Rs.31,26,229.60 [(Rs.23,123x12x13)+(30% future propsects)-(1/3rd deduction for personal expenses)]. In addition, the claimants would be entitled for a sum of Rs.70,000 towards conventional heads in terms of dictum in paragraph 59.8 of Pranay Sethi (supra). Thus, a total sum of Rs.31,96,230 (Rupees thirtyone lakh ninety six thousand two hundred thirty only), as rounded off, is payable to the claimants.''

6.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the appellants have not produced any document to prove the avocation and income of the deceased. In the absence of any material evidence with regard to avocation and income of the deceased, the Tribunal rightly fixed a sum of Rs.6,500/- as monthly income of the deceased and awarded compensation under different heads. The Tribunal after considering all the materials available on record in proper perspective, has awarded just compensation, which is not meagre. The 2nd appellant is married major son of the deceased and he is not a dependent of deceased and the Tribunal has rightly deducted 50% towards personal expenses of the deceased and prayed for dismissal of the appeal.

7.Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the 2nd respondent/Insurance Company and perused all the materials available on record.

8.It is the contention of the appellants that the deceased was aged 48 years at the time of accident and was earning a sum of Rs.20,000/- per month by doing Real Estate Business. To prove the income of the deceased, the 2nd appellant examined himself as P.W.1. The appellants have not filed any document to prove the avocation and income of the deceased. The Tribunal in the absence of any material evidence following the judgment of the Hon'ble Apex Court reported in 2014 (1) TN MAC Page 459 (SC) Syed Siddiq Ali and others Vs.Divisional Manager, United India Insurance C0. Ltd., fixed a sum of Rs.6,500/- per month as notional income of the deceased. The Tribunal after adding 30% towards future prospects, deducting 50% towards personal expenses and applying multiplier 13, has awarded a sum of Rs.6,59,100/- towards loss of dependency. The accident is of the year 2014. The monthly income fixed by the Tribunal is meagre. Therefore, a sum of Rs.12,000/- per month is fixed as notional income of the deceased. As per Ex.P4/Post-mortem report, the deceased was aged 48 years at the time of accident. The appellants are entitled to only 25% towards future prospects. The reason given by the Tribunal for deducting 50% towards personal expenses of the deceased that the 2nd appellant is a married son and he is not a dependent of the deceased is not correct. The Hon'ble Apex Court in the judgment relied on by the learned counsel appearing for the appellants referred to above has held that even married major sons are entitled to compensation as they are legal heirs of the deceased.

9.Following the judgment of the Hon'ble Apex Court reported in I (2020) ACC 130 (SC) Natinal Insurance Company Limited Vs. Birender and others, 1/3rd has to be deducted towards personal expenses of the deceased. Thus, the amount awarded by the Tribunal towards loss of dependency is modified to Rs.15,60,000/- (Rs.12,000/- + 3000 (12,000/-x 25%) x12x13x2/3) The Tribunal has awarded a sum of Rs.1,00,000/- towards loss of consortium, which is excessive and the same is hereby reduced to Rs.40,000/-. The Tribunal has awarded a sum of Rs.10,000/- towards funeral expenses, which is meagre and the same is enhanced to Rs.15,000/-. The appellants are not entitled to any amounts towards extra nourishment and loss of expectation of life. Hence the amounts awarded by the Tribunal under the said heads are hereby set aside. The Tribunal has not awarded any amount towards loss of estate. Hence, a sum of Rs.15,000/- is awarded towards loss of estate. The amounts awarded by the Tribunal under other heads are just and reasonable and hence the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Loss of dependency	6,59,100/-	15,60,000/-	Enhanced
2.	Loss of Consortium	1,00,000/-	40,000/-	Reduced
3.	Loss of Love and Affection	50,000/-	50,000/-	Confirmed
4.	Medical Expenses	3,55,500/-	3,55,500/-	Confirmed
5.	Transport expenses	5,000/-	5,000/-	Confirmed
6.	Extra-nourishment	5,000/-	-	Set aside
7.	Funeral Expenses	10,000/-	15,000/-	Enhanced
8.	Loss of Expectation of life	10,000/-	-	Set aside
9.	Loss of estate	-	15,000/-	Granted
	Total	11,94,600/-	20,40,500/-	8,45,900/-

10.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.11,94,600/- is hereby enhanced to Rs.20,40,500/- 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 and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants are permitted to withdraw their respective share of the award amount on the basis of apportionment fixed by the Tribunal along with proportionate interest and costs, less the amount if any, already withdrawn by filing necessary applications before the Tribunal. No Costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1.Motor Accidents Claims Tribunal,
(V Small Causes Court, Chennai)
Cuddalore.

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

+1cc to Mr.K.Suryanarayanan, Advocate Sr.10678
+1cc to Mr.D.Bhaskaran, Advocate Sr.10930

C.M.A.No.3403 of 2017

mr[co]
srg 16/09/2020