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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.12.2020

CORAM

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

C.M.A.No.3464 of 2017

1.P.Jamuna Rani
2.Mahalakshmi
3.Durga Devi
4.Renuga Devi

...Appellants/Petitioners

Versus

1.M.Suresh
(Since R1 remained exparte before the Tribunal
his presence may be dispensed with).
2.The Bharathi AXA General Insurance Company Limited,
2nd Floor, Metro Plaza,
No.162, Annasalai,
Chennai - 600 002.

...Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to enhance the award against the judgment and decree dated 28.08.2017 and made in M.A.C.T.O.P.No.499 of 2014 on the file of the Motor Accident Claims Tribunal, II Additional District Judge, Thiruvallur at Poonamallee.

For Appellants : Ms.A.Subadra
for M/s.M.Malar

For Respondents : M/s.K.Poomalai for R2
Exparte - R1

JUDGMENT

Challenging the quantum of award and seeking enhancement of the compensation, the claimants who are the legal heirs of the deceased, preferred the above appeal as against the judgment and decree dated 28.08.2017 passed in M.A.C.T.O.P.No.499 of 2014 on the file of the Motor Accident Claims Tribunal, II Additional District Judge, Thiruvallur at Poonamallee.

2. The first appellant is the wife of late Perumal, who died due to the accident. The other appellants are the children and mother of the deceased late Perumal. It is not in dispute that



the accident took place on 09.05.2014 and the deceased was self employed as Gunny Bag Merchant. The deceased died on the spot. The Tribunal after finding that the vehicle belonged to the first respondent in the claim petition was responsible for the accident, fixed the liability against the Insurance Company, namely, the second respondent. The Tribunal taking into account the income of the deceased at Rs.5,000/- per month, awarded the compensation to the tune of Rs.5,95,160/- including the conventional heads.

3. Aggrieved by the quantum, the claimants have preferred this appeal seeking for enhancement of compensation. Before the Tribunal, the claimants have prayed for a sum of Rs.10,00,000/-. Before this Court, in the appeal, the claimants have restricted their claim to Rs.9,00,000/-.

4. The learned counsel appearing for the appellants stated that the income of the deceased has been wrongly fixed at Rs.5,000/- per month. The accident occurred in the year 2014 and that the notional income should be more than that was arrived by the Tribunal. He would further submit that the correct multiplier to be adopted is '9' and the future prospects should be taken by following the judgment of the Hon'ble Supreme Court. He submitted that 10% enhancement should be allowed towards future prospects.

5. The learned counsel appearing for the respondent, however contended that the Tribunal has awarded more than Rs.2,00,000/- under the conventional heads and the quantum of compensation need not be enhanced.

6. Considering the fact that the was in the year 2014 and taking note of the decision of the Hon'ble Supreme Court and this Court in several cases, this Court fixes the monthly income of the deceased at Rs.7,500/- and 10% should be added towards future prospects. Accordingly, the income of the deceased is fixed at Rs.8,250/- (7500 +750) for the purpose of fixing loss of income.

7. In this case, taking into consideration the number of claimants, the Tribunal was wrong in deducting 1/3rd of the income towards personal expenses and it would be appropriate to deduct 1/4th towards personal expenses. If 1/4th is deducted towards personal expenses, the monthly income of the deceased would be Rs.6187/- (8250-2063). The multiplier to be adopted is 9. Accordingly, the compensation payable under the head loss of income would be Rs.6,68,196/- (6187*12*9). The Insurance Company has serious objection as against the compensation awarded under other conventional heads.



8. The claimants namely wife, children and mother of the deceased are entitled to get atleast a sum of Rs.40,000/- each towards loss of consortium. Hence, a sum of Rs.1,70,000/- can be awarded under the other conventional heads.

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9. Accordingly, a sum of Rs.8,38,196/- can be awarded in favour of the claimants. The award is modified by directing the respondents to pay a sum of Rs.8,38,196/- in all to the claimants as compensation for the loss of the first appellant's husband. The claimants are entitled to interest at 7.5% from the date of petition.

10. Accordingly, the above appeal is allowed and the judgment and decree dated 28.08.2017, made in M.A.C.T.O.P.No.499 of 2014 on the file of the Motor Accident Claims Tribunal, II Additional District Judge, Thiruvallur at Poonamallee, is set aside and modified to the extent indicated above. The claimants are entitled to get proportionate amount in the same ratio as directed by the Tribunal and the amounts calculated as per this order shall be deposited in the respective accounts as per the direction of Tribunal. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accident Claims Tribunal,
II Additional District Judge,
Thiruvallur at Poonamallee.

Copy To

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

+1cc to M/s.Malar, Advocate, S.R.No.39892
+1cc to M/s.K.Poomalai, Advocate, S.R.No.40177

C.M.A. No.3464 of 2017

MG (CO)
RGA (08/09/2021)