IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.07.2020

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.625 of 2017

1. A.Aanandhayee
2. K. Vijaya ... Appellants

vs.

1. S.Asaithambi
2. A.Senthilkumar
3.United India Insurance Co Ltd.,
No.3, Giriram Building, Main Road,
Gobichettipalayam, Erode District. ... Respondents

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 18.10.2016 made in M.C.O.P.No.195 of 2009 on the file of the Motor Accident Claims Tribunal -Cum- Subordinate Court, Sankari.

For Appellants : Mr.C.Kulanthaivel

For R1 & R2 : Notice dispensed with

For R3 : Mr.J.Chandran

JUDGMENT

This appeal is preferred by the appellants/claimants against the award of a sum of Rs.11,08,600/- towards compensation for the death of one Arumugam in a motor vehicle accident.

2.The case in brief, is as follows:

On the fateful day, ie. on 29.12.2008, at about 9.00 a.m., the deceased Arumugam was travelling as a load man along with others in Mahindra & Mahindra Tata Ace vehicle bearing Registration No.TN-30-R-1926 belonging to the second respondent and insured with the third respondent insurance company, from Vaikundam to Kalipatti Road. When the vehicle reached near Kaspanur Palam, due to the rash and negligent driving of the driver, the vehicle got capsized. Due to the said impact, the deceased was thrown out on the road and sustained fatal injuries and died on the spot. The wife and daughter of the deceased, being the surviving legal heirs, filed a claim petition before the Tribunal, seeking compensation of Rs.10,00,000/-. On consideration of the materials and evidence available on record, the Tribunal has awarded a total compensation of Rs.11,08,600/- 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 compensation.

3.Though the appellants in the memorandum of grounds of appeal, stated that the petition to amend the claim amount from Rs.10,00,000/- to Rs.20,00,000/- was filed along with this appeal, it is seen from the records that there was no such petition filed. However, this Court is of the view that there is no restriction to award compensation exceeding the claimed amount, since the Motor Vehicles Act is a beneficial and welfare legislation and a just compensation is one, which is reasonable on the basis of evidence produced on record. Further, there is no need for a new cause of action to claim an enhanced amount and hence, the Court is duty bound to award just compensation. (See : Nagappa v. Gurudayal Singh [(2003) 2 SCC 274]; Magma General Insurance v. Nanu Ram [(2018) SCC Online SC 1546]; and Ibrahim v. Raju [(2011) 10 SCC 634]).

4.It is the submission of the learned counsel for the appellants that when the deceased was earning Rs.300/- per day as load man and coolie under the contractor of BSNL Cable Work, the Tribunal has erred in determining his monthly income only at Rs.6,000/-, while calculating compensation towards future loss of earning capacity. It is also submitted that the amounts awarded towards loss of consortium, loss of love and affection and funeral expenses are meagre and hence, the compensation awarded by the Tribunal needs interference at the hands of this Court by way of enhancement.

5.Per contra, the learned counsel for the third 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.

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

7.With respect to quantum of compensation, it is seen that the daughter of the deceased was examined as P.W.1, who deposed in her evidence that the deceased was aged about 43 years and was earning Rs.9,000/- per month by working as a load man and Agriculturist. 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.6,000/- per month as the notional income of the deceased, added 30% of the amount towards future prospects and out of the resultant amount, deducted 1/3rd of the amount towards personal expenses of the deceased, adopted 14 multiplier and awarded a sum of Rs.8,73,600/- towards future loss of earning capacity. The accident occurred in the year 2008. Taking note of the year of accident and based on the evidence of PW2 and PW4, this Court is of the view that fixing a sum of Rs.7,800/- towards monthly income of the deceased, would be proper. Taking into consideration the judgment of the Hon'ble Supreme Court, reported in 2017 (2) TNMAC 609 (SC) (National Insurance Company v. Pranay Sethi & others), the percentage of future prospects has to be fixed at 25% and not 30% as fixed by the Tribunal. The multiplier of 14 adopted by the Tribunal is the correct multiplier. Thus, if a sum of Rs.7,800/- is fixed as notional income per month, 25% of the amount is added towards future prospects and 1/3rd is deducted from the resultant amount and by adopting 14 multiplier, the compensation towards future loss of earning capacity works out to Rs.10,92,000/- ([Rs.7800 + 1,950] x 12 x 14 x 2/3). Accordingly, the compensation awarded by the Tribunal towards future loss of earning capacity stands modified to Rs.10,92,000/-. The amount awarded by the Tribunal towards Loss of consortium and Love and affection are excessive and it would be appropriate to reduce the same to Rs.40,000/- and Rs.80,000/- (Rs.40,000/- to each of the claimants), respectively. The Tribunal has not awarded any amount towards loss of estate and hence, a sum of Rs.15,000/- is now awarded under this head. The amount awarded by the Tribunal towards Funeral Expenses and Transport Expenses at Rs.25,000/- and Rs.10,000/- respectively, are just and reasonable and hence the same are confirmed.

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

HEADS	AMOUNT (Rs.)
Pecuniary Loss	10,92,000/-
Loss of Consortium	40,000/-
Loss of love and affection	80,000/-
Loss of Estate	15,000/-
Funeral Expenses	25,000/-
Transport Expenses	10,000/-
TOTAL....	12,62,000/-

9.In the result, the Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at

Rs.11,08,600/- is hereby enhanced to Rs.12,62,000/- with interest at the rate of 7.5% per annum from the date of petition. No costs. The third 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 six weeks from the date of receipt of a copy of this judgment. On such deposit, 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 the appropriate Court fee, before receiving the awarded amount.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To
1. The Sub Judge,
   Motor Accident Claims Tribunal,
   Subordinate Court, Sankari.

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

+1cc to Mr.C.Kulanthaivel, Advocate, S.R.No.25332

C.M.A.No.625 of 2017

SVL(CO)
ASK(30/04/2021)