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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.07.2020

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.NO.658 OF 2017

1.Kaanthammal
2.Palani @ Palanisamy
3.Govindan
4.Mariamammal

...Appellants/Petitioners

Vs

1.R.Madhayan
2.M.Senthamarai Selvi Murugesan
3.M/s.National Insurance Co.Ltd.,
rep.by its Manager, 1st Floor, 1631-1/B
Salem Bhavani Main Road, Sankagiri
Salem District-637 301.
4.M/s.National Insurance Co.Ltd.,
rep.by its Manager, Karthikeya Complex
Mettur Main Road, Bhavani.

(Notice to R1, R2 and R4 may be dispensed with
for the time being since they were set ex-parte
before the Tribunal. Separate petition filed to
dispense with notice.)

...Respondents/Respondents

Appeal under Section 173 of the Motor Vehicles Act, 1988,
against the order made in MCOP No.136 of 2011 on the file of the
Motor Accidents Claims Tribunal cum 4th Additional District
Court, Bhavani, Erode District, dated 13.07.2012.

For Appellants : Mr.C.Kulanthaivel

For Respondents : Mr.D.Bhaskaran for R3
R1,2,4 : Exparte



JUDGMENT

This appeal is preferred by the appellants/claimants against the award of a sum of Rs.3,15,000/- towards compensation, due to the death of the husband of the first appellant / father of the appellants 2 to 4, in a motor vehicle accident.

2.The case in brief, is as follows:

On the fateful day, ie. on 01.11.2010, at about 06.45 p.m., the deceased Periyasamy was standing in the Sulai Bus Stop, Sathi Road, Erode on the extreme left side of the road. At that time, the Private Bus bearing Reg.No.TN-52-9933, belonging to the second respondent and insured with the third respondent Insurance Company, came in a rash and negligent manner and dashed against the deceased Periyasamy. Due to the said impact, the deceased sustained grievous injuries and died on the spot. The first respondent herein is the driver of the bus. The wife, sons and daughter of the deceased filed a claim petition before the Tribunal, claiming a sum of Rs.15,00,000/- as compensation. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.3,15,000/- with interest at the rate of 7.5% per annum from the date of petition.

3.Challenging the same, the appellants/claimants have filed the present Civil Miscellaneous Appeal for enhancement of compensation.

4.The learned counsel for the appellants /claimants has submitted that the Tribunal has not properly considered and decided the monthly income of the deceased as per the deposition of P.Ws.1 and 2 and the documents marked, while awarding compensation. It is also submitted that the multiplier adopted by the Tribunal is not proper. It is further submitted that the Tribunal has erred in deducting 1/3rd of the amount towards personal expenses of the deceased while calculating income, when the dependents are four in number and therefore, the Tribunal ought to have deducted only 1/4th of the amount instead of 1/3rd. Stating so, the learned counsel prayed for enhancement of compensation.



5.The learned counsel for the third respondent / Insurance Company has submitted that the Tribunal has rightly considered the materials and evidence available on record and has awarded the just, fair and reasonable compensation and hence the same does not require any interference at the hands of this Court.

6.Heard the learned counsel for the appellants and the learned counsel for the third respondent Insurance Company and perused the materials available on record carefully and meticulously.

7.This is a claimants' appeal seeking enhancement of the compensation awarded by the Tribunal. Hence, this Court is not inclined to go into the findings of the Tribunal with respect to negligence as well as the liability of the third respondent Insurance Company to pay compensation.

8.The details of the compensation awarded by the Tribunal are as follows:

HEADS	AMOUNT (Rs.)
Permanent loss of income	2,88,000/-
Loss of love and affection	10,000/-
Loss of consortium	10,000/-
Funeral expenses	5,000/-
Transportation expenses	2,000/-

TOTAL...	3,15,000/-
	=====

9.The Tribunal has awarded a sum of Rs.2,88,000/- towards permanent loss of income by fixing the monthly income of the deceased at Rs.4,500/-, deducting 1/3rd of the amount towards personal expenses of the deceased and adopting the multiplier of 8. The Tribunal has relied upon Ex.P6-Post Mortem Report of the deceased and has taken the age of the deceased as 60 years. Further, taking note of the earning capacity of the deceased and the economic situation prevailing at that time, the Tribunal fixed the monthly income of the deceased at Rs.4,500/-.



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10. It is claimed in the claim petition that the deceased was earning a sum of Rs.10,000/- per month as a mason and that he was the sole earning member of the family. It is submitted by the learned counsel for the appellants / claimants that the Tribunal has not properly considered the evidence of P.Ws.1 and 2 and the documents marked, while fixing the monthly income of the deceased at Rs.4,500/-. It is also his specific submission that the Tribunal ought to have deducted $\frac{1}{4}^{\text{th}}$ of the amount towards personal expenses of the deceased while arriving at the compensation towards loss of income, instead of $\frac{1}{3}^{\text{rd}}$, since there were four dependents,. It is also his submission that the proper multiplier is 9 and the Tribunal has erred in adopting the multiplier of 8.

11. It is seen that the deceased was the entire caretaker of the family having four dependents. Taking note of the above submissions of the learned counsel for the appellants / claimants, economic situation prevailing at that time and also the facts and circumstances of the case, this Court is of the considered view that the monthly income of the deceased has to be taken as Rs.8,000/- instead of Rs.4,500/- fixed by the Tribunal. There is no need to change the multiplier adopted by the Tribunal, as the Tribunal has adopted '8' multiplier considering the age of the deceased as 60 years, based upon the Post Mortem Report. Further, the $\frac{1}{3}^{\text{rd}}$ deduction made by the Tribunal also does not require any interference. If Rs.8,000/- is taken as the monthly income of the deceased and $\frac{1}{3}^{\text{rd}}$ of the amount is deducted and the multiplier of 8 is adopted, the loss of income works out to Rs.5,12,000/-. Accordingly, the amount awarded by the Tribunal towards permanent loss of income stands modified to Rs.5,12,000/-. The Tribunal has awarded a sum of Rs.10,000/- towards loss of consortium to the wife of the deceased, Rs.10,000/- towards loss of love and affection to the sons and daughter of the deceased, Rs.5,000/- towards funeral expenses and Rs.2,000/- towards transport expenses. It would be appropriate to award a sum of Rs.40,000/- towards loss of consortium to the wife of the deceased, a sum of Rs.1,20,000/- towards loss of love and affection to the sons and daughter of the deceased (Rs.40,000/- x 3), a sum of Rs.15,000/- towards funeral expenses and a sum of Rs.10,000/- towards transport expenses. Further, it would also be appropriate to award a sum of Rs.15,000/- towards loss of estate.



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12.The details of the modified compensation are as under:

HEADS	AMOUNT (Rs.)
Permanent loss of income	5,12,000/-
Loss of love and affection	1,20,000/-
Loss of consortium	40,000/-
Funeral expenses	15,000/-
Transportation expenses	10,000/-
Loss of estate	15,000/-

TOTAL..	7,12,000/- =====

Thus, the appellants / claimants are entitled to the modified compensation of Rs.7,12,000/-. It is made clear that only for the compensation of Rs.3,15,000/- awarded by the Tribunal, the interest rate of 7.5% per annum shall be calculated from the date of claim petition. For the enhanced amount of Rs.3,97,000/-, the interest rate of 7.5% shall be calculated from the date of filing of this appeal.

13.The Civil Miscellaneous Appeal is disposed of accordingly. No costs.

14.The third respondent Insurance Company is directed to deposit the modified compensation as ordered above, less 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 being made, the appellants / claimants shall withdraw the same, on making proper application before the Tribunal.

15.Even though the claimants have claimed a sum of Rs.15,00,000/- as compensation before the Tribunal, they have restricted their claim to Rs.7,00,000/- before this Court. It is stated in the grounds of appeal that they have restricted their claim to Rs.7,00,000/-, as they were not in a position to pay more Court fee at that stage. Since the compensation amount now



awarded is Rs.7,12,000/-, it is made clear that the claimants have to pay the appropriate Court fee in order to receive the awarded amount.

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Sd/-
Assistant Registrar(CS-V)

// True Copy //

Sub Assistant Registrar

KM

To

1. The Motor Accidents Claims Tribunal
cum 4th Additional District Court,
Bhavani, Erode District,
2. The Section Officer,
VR Section,
Madras High Court.

C.M.A.No.658 of 2017

CA(CO)
RLP(16/11/2021)