IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.08.2020

CORAM

THE HONOURABLE MR. JUSTICE R.MAHADEVAN

Civil Miscellaneous Appeal No.825 of 2017

1.R.Malar
2.R.Uma Mageshwari ... Appellants/Claimants

Vs.

1.K.Sripathy (Remained ex-parte before the Trial Court)

2. United India Insurance Company Limited,
Motor Third Party Hub, 4th Floor, "Silinghi Buildings",
No.134, Grems Road, Thousand Lights,
Chennai - 600 006. ... Respondents /Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988 against the Judgment and Decree dated 05.09.2014 made in M.A.C.T.O.P.4018 of 2013 on the file of the Motor Accidents Claims Tribunal, Chief Judge Small Causes Court, Chennai.

For Appellants : Mr.N.M.Muthurajan

For Respondent No.1 : Ex-parte

For Respondent No.2 : Mr. D.Bhaskaran

J U D G M E N T

Dissatisfied with the quantum of compensation awarded by the Tribunal at Rs.4,91,000/-, the claimants / appellants, who are the wife and daughter of the deceased (C.Raji) are before this Court by way of this Appeal.

2. The case of the claimants / appellants is that on 29.04.2013 at about 20.00 hrs, while the deceased was crossing 100 feet road, Velacherry, opposite to Sangeetha Hotel along pedestrian crossing, the first respondent's motorcycle bearing Reg.No.TN05-X-8799, which was ridden by its rider in a rash and negligent manner, hit against him, due to that he sustained fatal injuries and in spite of best treatment given, he succumbed to the injuries, on 30.04.2013. Claiming that the deceased during the time of accident was aged 52 years, self-

employed as Mason and earning Rs.750/- per day and the rider of the two-wheeler is solely responsible for the accident, the claimants have filed a claim petition claiming a sum of Rs.10,00,000/-.

3.The Tribunal, based on the evidence of P.W.1 and Exs.P-1-FIR and P-2-Sketch and P-5 charge sheet and in the absence of eye-witness to the accident, has fastened the liability on the first respondent, which has to be indemnified by the second respondent / Insurer and ultimately quantified the total compensation at Rs.4,91,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of deposit, aggrieved by which, the claimants / appellants are before this Court.

4. Heard both sides.

5.The learned counsel for the claimants / appellants submitted that when the deceased was working as Mason and was earning Rs.750/- per day and the same was proved by the evidence of P.W.1 and Ex.P-4, the Tribunal has erred in fixing the monthly income at Rs.4,500/-; the Tribunal failed to appreciate the reality of earnings of skilled workers; the reasonings observed by the Tribunal are imaginary and subjective one; the Tribunal failed to consider future prospects of the deceased; the amount awarded towards loss of consortium at Rs.25,000/- is on the lower side, since the wife of the deceased / first appellant herein was aged 35 only at the time of accident; and in any event, the Tribunal has awarded a meager compensation at Rs.4,91,000/- as against the claim of Rs.10,00,000/-.

6.Per contra, the learned counsel for the second respondent / Insurer submitted that the Tribunal has taken into consideration each and every aspect and has awarded the just, fair and reasonable compensation, which does not require any interference at the hands of this Court. He also submitted that no document was produced on the side of the claimants / appellants to prove the income of the deceased and hence the monthly income fixed by the Tribunal, based on the probabilities of the case and settled principles of law, cannot be found fault with. He finally submitted that the amounts awarded by the Tribunal under other heads also cannot be said to be on the higher side.

7.This Court has considered the said submissions made by the learned counsel for both sides and perused the materials available on record.

8.Based on the evidence of P.W.1 and Exs.P-1-FIR, P-2-rough sketch and P-5-charge sheet and in the absence of any evidence or documents on the side of the respondents and in the absence of any eyewitness to the accident, the Tribunal has fastened the liability on the rider of the two-wheeler, which has to be compensated by the Insurer / second respondent herein. No new fact or evidence is forthcoming to unsettle such finding. Also the challenge to the appeal is only against quantum and hence the findings on negligence by the Tribunal based on the evidence and documents on record are confirmed as such.

9.As far as the quantum of compensation arrived at by the Tribunal is concerned, it is pertinent to mention here that the deceased being the head of the family would have supported and taken care of the claimants / appellants. To prove the avocation and income of the deceased, P.W.2 has been examined, who deposed that he was working as Mason for past 9 years and the deceased was also working with him as Mason and P.W.2 was earning Rs.800/- to Rs.900/- per day and during the time of accident, the deceased was earning Rs.750/- to Rs.800/- per day. Though there is no material document to prove the avocation and income of the deceased, except the evidence of P.W.2, no document or evidence was available on record to unsettle the evidence of P.W.2. But the Tribunal has observed that the Mason would not get work through out the month and P.W.2 has not produced any identity card to prove that he is working as Mason in any concern, and in the absence of any documentary proof therefor, the Tribunal, based on the decision, in the case of National Insurnace Company Ltd v. Pushpa and others reported in 2005 ACC 514 : 2005 ACJ 600 has taken the monthly income at Rs.4,500/- and deducted 1/3rd towards the personal and living expenses of the deceased, applied the multiplier of 11 and arrived at the loss of dependency at Rs.3,96,000/-. The said findings of the Tribunal cannot hold good anymore, in view of the fact that the rise in the cost of living affects everyone across the board. It does not make any distinction between rich and poor. As a matter of fact, the effect of rise in prices which directly impacts the cost of living is minimal on the rich and maximum on those who are unskilled workers or self-employed. In fact, they are the worst affected people. Therefore, they put in extra efforts to generate additional income necessary for sustaining their families. The salaries of those employed in private sectors have also increased manifold. Although the wages/income of those employed in unorganised sectors has not registered a corresponding increase and has not kept pace with the increase in the salaries of the Government employees and those employed in private sectors, it cannot be denied that there has been incremental enhancement in the income of those who are self-employed and even those engaged on daily basis, monthly basis or even seasonal basis. While stating so, this Court can take judicial notice of the fact that with a view to meet the challenges posed by high cost of living, the persons falling in the latter category periodically increase the cost of their labour. In this context, it may be useful to give an example of a tailor who earns his livelihood by stitching clothes. If the cost of living increases and the prices of essentials go up, it is but natural for him to increase the cost of his labour. So will be the cases of ordinary skilled and unskilled labour like barber, blacksmith, cobbler, mason, etc. Hence this Court is of the view that the monthly income of the skilled worker herein shall be taken at Rs.10,000/-. Since the personal and living expenses and multiplier adopted by the Tribunal in this case are based on Second Schedule of the Motor Vehicles Act and decisions rendered therefor, the same are taken as such. Hence, under the head loss of dependency, the amount to be awarded to the claimants would be (Rs.10,000/- x 2/3 x 12 x 11) : Rs.8,80,000/-. Though the appellants / claimants claim future prospective increase in income, the same cannot be entertained since the monthly income taken would itself offset the future prospects also.

10. The Tribunal has awarded a sum of Rs.40,000/- towards loss of love and affection and Rs.25,000/- towards loss of consortium. In the opinion of this Court, the amount awarded towards loss of consortium is low and it would be appropriate to enhance the same to Rs.40,000/-. The amounts awarded towards loss of love and affection, funeral expenses and travelling expenses at Rs.40,000/-, Rs.25,000/- Rs.5,000/- respectively, are confirmed.

11. In fine, the re-structured compensation, item-wise, would be thus:

Loss of consortium	-	Rs. 40,000/-
Loss of love and affection	-	Rs. 40,000/-
Loss of dependency	-	Rs.8,80,000/-
Funeral expenses	-	Rs. 25,000/-
Travelling expenses	-	Rs. 5,000/-
		Rs.9,90,000/-

12.In the result, this Civil Miscellaneous Appeal filed by the claimants / appellants is partly-allowed, by enhancing the total amount of compensation from Rs.4,91,000/- to Rs.9,90,000/- along with interest at the rate of 7.5% p.a. from the date of filing of the petition till the date of deposit amount. The second respondent shall deposit the compensation amount as arrived by this Court now along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit, less the amount already deposited, if any, within a period of eight weeks, from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the deposited amount to the Savings Bank Accounts of the claimants / appellants, within one week thereafter, through RTGS, as per the ratio of apportionment made by the Claims Tribunal. Needless to state that the appellants shall pay necessary court fees for the enhanced compensation amount before receiving the copy of this judgment. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

srk
To

The Chief Judge,
Small Causes Court (Motor Accidents Claims Tribunal)
Chennai.

Copy to

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

+1cc to Mr.N.M.Muthurajan, Advocate Sr.27461

C.M.A.No.825 of 2017

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srg 29/04/2021