IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 22.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

CMA.No.2796 of 2008

1. S.Rani
2. S.Porchelvi
3. S.Kayalvizhi ... Appellants/ claimants

Vs,

1. V.Jayachandran
2. United India Insurance Company Ltd., No.38, Anna Salai, Chennai 600 002.
3. Sukumar
4. S.Ramesh Nahar ... Respondents/Respondents

This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 31.03.2008 passed in MCOP No.1391 of 2004 by the Chief Judge, Judge, Motor Accident Claims Tribunal, Court of Small Causes, Chennai.

For Appellants : Mr.S.Parthasarathy

For respondents : Mr.S.Arunkumar for R2

Notice served to R1 and R4
Notice dispensed with against R3

J U D G M E N T

Not satisfied with the quantum of compensation awarded by the Tribunal, the claimants are before this court for enhancement of the compensation.

2. The claimants have filed a claim petition before the Tribunal seeking compensation of Rs.5,00,000/- for the death of one S.Velavan, son of the first claimant and brother of the second and third claimants, in a road accident that took place on 23.03.1998.

3. The brief case of the claimants is as follows: On 23.03.1998, at 1.30 a.m. the deceased S.Velavan was travelling in a Tata 407 milk loaded vehicle bearing registration No.TN-09-F-0234, engaged as a milk salesman from Mylapore to Vandalur and while the vehicle was nearing Standard Motor Company, Ellaimman Kioil, it got colluded with a stationed lorry bearing registration No.TN-01-H-6355, which halted in the middle of the GST Road, thereby he sustained fatal injuries and died on the spot. According to the claimants, the driver of the lorry halted the vehicle in the middle of the road, without any indicator and since there was a total darkness in that area, the lorry could not be seen by the driver of the milk van and inview of the same the accident was occurred and since the first respondent insured his vehicle with the second respondent, both of them are liable to pay compensation to the claimants.

4. The claim petition was resisted by the second respondent/ Insurance company by filing counter affidavit.

5. Before Tribunal, on the side of the claimants, two witness were examined as PW1 and PW2 and Ex.P1 to Ex.P3 were marked. On the side of the second respondent, one witness was examined as RW1 and Ex.R1 and Ex.R2 were marked.

6. After analysing the evidence on record, the Tribunal has awarded a sum of Rs.1,25,000/- as compensation to the claimants under various heads as extracted hereunder.

| Sl No | Heads | Amount in Rs. |
|---|---|---|
| 1 | Loss of dependency | 1,00,000 |
| 2 | Transportation and funeral expenses | 5,000 |
| 3 | Loss of love and affection to the first claimant | 10,000 |
| 4 | Loss of love and affection to the second and claimant 5000 each | 10,000 |
| | Total | 1,25,000 |

Not satisfied with the quantum of compensation awarded by the Tribunal, the claimants are before this court, seeking enhancement of compensation.

7. Heard the learned counsel for the appellants and the counsel for the insurance company and I have perused the materials on record.

8. The learned counsel appearing for the appellants/ claimant submitted that the deceased was working as a sales man under the third respondent and he was earning a sum of Rs.3,000/- per month, however, the Tribunal has fixed the annual income of the deceased at Rs.15,000/- and after deducting one third of the income, has fixed the annual income of the deceased at Rs.10,000/-, which is very meagre. The age of the deceased was 23 years on the date of accident, however, while adopting multiplier method, the Tribunal has erred in taking the age of the mother of the deceased and awarded a sum of Rs.1,00,000/- towards "Loss of dependency", which is very meagre. He further submitted that only a sum of Rs.5,000/- is awarded towards "Transportation and funeral expenses" and the compensation awarded towards "Loss of love and affection" is also very meagre and hence, he prayed for enhancement of compensation.

9. The learned counsel appearing for the second respondent/ insurance company submitted that after considering the various factors and after analysing the oral and documentary evidence, the Tribunal has correctly fixed the monthly income of the deceased and awarded a just and reasonable compensation and hence, does not warrant any interference by this court.

10. Now the point for consideration is whether the compensation awarded by the Tribunal has to be enhanced.

11. Point

It is the contention of the claimants that the deceased was working as a salesman under the third respondent and was earning a sum of Rs,3,000/- per month. However, to prove the same the third respondent was not examined and no proof of income was filed. Therefore, considering the year of the accident, monthly income of the deceased is fixed at Rs.1,250/-. As per the decision of the Constitution Bench of the Hon'ble Supreme Court of India in National Insurance Company Limited Vs. Pranay Sethi and others reported in 2017 (2) TN MAC 609 (SC), 40% should be added towards “ Future prospects”. According to the claimants, the deceased was aged 28 years on the date of accident and therefore, proper multiplier to be adopted in the instant case is ' 17 ', as per the decision rendered in Sarla Varma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. Further one third of the actual income should be deducted towards personal expenses of the deceased. Thus, loss of dependency is calculated as 1250 + 500 = 1750 - 582 = 1168 x 12 x 17= 2,38,272/-. Accordingly a sum of Rs.2,38,272/- is awarded towards " Loss of dependency " and a sum of Rs.40,000/- is awarded towards “ Loss of love and affection ” and a sum of Rs.15,000/- each is awarded towards “ Funeral Expenses” and “ Loss of estate” Accordingly, the revised compensation awarded under the various heads is extracted hereunder.

| Sl.No | Heads | Compensation Awarded by the Tribunal | Compensation enhanced/ Awarded by this court |
|---|---|---|---|
| 1 | Loss of dependency | 1,00,000 | 2,38,272 |
| 2 | Transportation and funeral expenses | 5,000 | 15,000 |
| 3 | Loss of love and affection to the petitioners | 10,000 | 40,000 |
| 4 | Loss of love and affection to the second and claimant 5000 each | 10,000 | - |
| 5 | Loss of estate | - | 15,000 |
| 6 | Total | 1,25,000 | 3,08,272 |
| | Rounded off to | | 3,08,500 |

This amount shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

12. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed and the award passed by the Tribunal is enhanced from Rs.1,25,000/- to Rs.3,08,500/- No costs.

(ii) The second respondent/insurance company is directed to deposit the revised compensation of Rs.3,08,500/- with interest at the rate of 7.5.% p.a. from the date of claim petition till the date of deposit, less the amount if already deposited, within a period of six weeks from the date of receipt of a copy of this order.

(iii) On such deposit being made by the insurance company, the claimants are entitled to withdraw the same, as per the apportionment made by the Tribunal, after following due process of law.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mst

To

1. The Chief Judge, Motor accident Claims Tribunal,
   Court of Small Causes, Chennai.

2. The Section Officer, V.R.Section, Chennai.

+1cc to Mr.S.Arunkumar, Advocate, S.R.No.18368
+1cc to Mr.S.Parthasarathy, Advocate, S.R.No.18382

CMA. No.2796 of 2008

SS(CO)
SB(12/10/2021)