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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.02.2021

CORAM:

THE HON'BLE Mr. JUSTICE D.KRISHNAKUMAR

C.M.A.No.681 of 2009

1.R.Suguna

2.R.Deepa

3.R.Purushothaman (Minor)

Rep.by mother & Next friend

R.Suguna

4.V.Thulasi Ammal

... Appellants

..Vs..

1.A.Mary Rani

2.The Oriental Insurance Co.Ltd.,

United India Building,

Esplande, Chennai.

... Respondents

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the common judgment and decree in M.C.O.P.No.2686 of 2004 dated 29.04.2008 on the file of the II Judge, Small Causes Court, (Motor Accidents Claims Tribunal), Chennai.

For Appellants : Mr.K.A.Ravindran

For Respondents : R1- Notice unserved

Mr.A.Arunkumar for R2

J U D G M E N T

This Civil Miscellaneous Petition has been filed against the judgment and decree in M.C.O.P.No.2686 of 2004 dated 29.04.2008 on the file of the II Judge, Small Causes Court, (Motor Accidents Claims Tribunal), Chennai.

2. The appellants are the wife, daughter, son and mother of the deceased Ravi. It is the case of the claimants that on



25.01.2004 at about 3.30 p.m., the deceased Ravi along with others were travelling as passengers in a Van bearing Reg.No.TN-07-M-3472, which was insured with the second respondent/Insurance Company, on Trichy-Chennai Road. The driver drove the Van in a rash and negligent manner and dashed on the back side of the Standing Bus bearing Reg.No.TN-32-N-1365. Due to the accident, deceased Ravi sustained fatal injuries.

3. It is the further case of the claimants that the deceased worked as Manifold Technician in Ramachandra Hospital and also as part time Technician in Cauvery Hospital and earned Rs.7,500/- per month. Hence, they made a claim for a sum of Rs.12,00,000/- as compensation.

4. The learned counsel for the second respondent / Insurance Company submitted that there is no negligence on the part of the driver of the Van. The accident occurred only due to the driver of the Bus belonging to the Tamil Nadu State Corporation, who had stopped the Bus suddenly without giving any signal. Hence, the Van slightly hit on the backside of the bus. Since the driver of the Tamil Nadu State Corporation Bus alone was responsible for the accident, the claimants are entitled to claim compensation only against them. Hence, the Insurance Company is not liable to pay compensation.

5. In order to prove the claim on the side of the claimants, the wife of the deceased examined herself as PW5 and the Doctors, who examined the deceased as well as the other injured persons, were examined as PW9 to PW12 and 50 documents were marked as Exs.P1 to P50. Court Summon was marked as Ex.C1. On the side of the Insurance Company neither any oral evidence was adduced nor documents were marked.

6.The Tribunal after analysing the entire evidence came to the conclusion that the accident was solely due to the rash and negligent act of the driver of the first respondent's Van and directed the second respondent/Insurance Company to pay compensation amount of Rs.6,54,940/-. The break-up details of the amount awarded by the Tribunal under various heads are as follows:



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Heads	Amount awarded by the Tribunal
Loss of Dependency	Rs.3,333 x 12 x 15 = 5,99,940/-
Funeral Expenses	5,000/-
Loss of Consortium	20,000/-
Love and affection	30,000/- -
Total	Rs. 6,54,940/-

Challenging the above, the present appeal has been preferred by the appellants before this Court.

7. The learned counsel for the appellants would submit that the Tribunal had taken only a meagre sum of Rs.5,000/- as monthly income without considering Exs.P21 and P202 the salary certificates of the deceased. However, actually deceased earned a sum of Rs.5,150 by working as Manifold Technician in Ramachandra Hospital and also earned a sum of Rs.2,000/- by working as a part time Technician in Cauvery Hospital. Thus, the deceased earned a sum of Rs.7,150/- per month. Further, the Tribunal also awarded meagre amounts under other heads and hence he seeks to enhance the same.

8. The learned counsel appearing for the second respondent/ Insurance Company would submit that the Tribunal rightly appreciating the entire evidence has fixed the compensation, which is just and fair. Further, as the age of the deceased being 42, the correct multiplier to be adopted by the Tribunal as per the decision of the Hon'ble Supreme Court in Sarla Verma and others Vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121 is "14", but the Tribunal wrongly taken 15, which needs to be rectified.

9. This Court considered the rival submissions made on both sides and perused the materials available on record.

10. It is the submission of the learned counsel for the appellants that the Tribunal has wrongly fixed a sum of Rs.5,000/- as monthly income of the deceased without proper appreciation of the evidence. On a perusal of the records, it is seen that the deceased Ravi worked as a Manifold Technician Level-I in Ramachandra Hospital and earned a sum of Rs.5,150/- per month and also as a Part Time Technician in Cauvery Trust



Hospital and earned a sum of Rs.2,000/- per month and to prove the same the claimants produced salary certificates, which were marked as Exs.P21 and P22. Thus, the deceased earned a sum of Rs.7,150/- by working in those two hospitals. Therefore, this Court fixes a sum of Rs.5,500/- as monthly income, after deducting the variables.

11. Thus, if a sum of Rs.5,500/- is taken as monthly income and 25% of the same is added towards future prospects, the amount works out to Rs.6,875/- [5,500 + 1,375]. If $1/4^{\text{th}}$ of the amount is deducted towards personal expenses, the amount works out to Rs.5,157/- [6,875 - 1,718]. Resultantly, the annual income comes to Rs.61,884/- [5,157 x 12]. Considering the age of the deceased being 42, the correct multiplier to be applied as per Sarla Verma and others Vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121 is "14". Hence, if multiplier "14" is applied, the "Loss of Dependency" comes Rs.8,66,376/-.

12. The sum of Rs.5,000/- awarded by the Tribunal under the head "Funeral Expenses" appears to be on the lower and hence the same is set aside, instead a sum of Rs.20,000/- is awarded under the head "Funeral and Transportation Expenses".

13. Further, the total sum of Rs.30,000/- awarded by the Tribunal under the head "Loss of Love and Affection" to the claimants is set aside, instead a sum of Rs.1,00,000/- is awarded to the claimants under the head "Filial Consortium" by awarding a sum of Rs.25,000/- to each of the claimants.

14. The total compensation is enhanced as mentioned below:

Heads	Amount awarded by the Tribunal	Enhanced compensation
Loss of Dependency	Rs.3,333 x 12 x 15 = 5,99,940/-	Rs.5,500 x 25/100 x 12 x 14-1/4 = 8,66,376/-
Funeral Expenses	5,000/-	...
Funeral & Transport Expenses	...	20,000/-
Loss of Consortium	20,000/-	1,00,000/-
Love and affection	30,000/-	...



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Heads	Amount awarded by the Tribunal	Enhanced compensation
Total	Rs. 6,54,940/-	Rs.9,86,376/-

15. Thus, the Civil Miscellaneous Appeal is partly allowed enhancing the compensation amount from Rs.6,54,940/- to Rs.9,86,376/- (Rupees Nine Lakhs Eighty Six Thousand and three hundred and seventy six only) with interest @ 7.5% per annum from the date of claim petition till the date of payment. The second respondent/Insurance Company is directed to deposit the award amount as determined above, less the amount if any already deposited, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the appellants 1, 2, & 4/ major claimants are permitted to withdraw their respective shares in the award amount, less the amount(s) if any already withdrawn by filing necessary application before the Tribunal. The share of the minor claimant shall be deposited in any Nationalised Banks in any Fixed Deposit Scheme and renewed periodically until he attains majority. The first appellant is permitted to withdraw the interest accruing thereon once in three months. The appellants/claimants are directed to pay necessary court fee, on the enhanced compensation amount. The apportionment of shares as fixed by the Tribunal is hereby confirmed. No costs.

SD/-
ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

dna

To

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

2.The Oriental Insurance Co.Ltd.,
United India Building,
Esplande,
Chennai.



Copy to

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

+1cc to M/s.S.Arunkumar, Advocate Sr.7926
+1cc to M/s.A.Shanmugaraj, Advocate Sr.8429

C.M.A.No.681 of 2009

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