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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 01.03.2021

Judgment Delivered on : 25.03.2021

CORAM

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.A.No.2821 of 2012

1. Jothibai
W/o. Masilamani
 2. Masilamani
S/o. Perumal
- ... Appellants/Claimants

Vs.

1. Sakthivel
S/o. Marimuthu
 2. The New India Insurance Company Limited,
Rep. By its Divisional Manager,
Divisional Office, No.1 Officer's Line,
Vellore.
 3. Sridar
S/o. Murugan
 4. The Oriental Insurance Company Limited
Rep. By its Divisional Manager,
Divisional Office,
No.1 Katapadi Road, Vellore
- ... Respondents/Respondents
- (Respondents 1 & 3 were exparte before Tribunal.
Hence notice dispensed with)

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.221 of 2006 dated 02.09.2009 on the file of the Motor Accidents Claims Tribunal, Principal District Judge, Vellore.

For Appellant : Mr.C.Prabhakaran
For Respondents : R1 & R3 - Exparte
Mr.G.Udaya Sankar for R2

JUDGMENT

(This case has been heard through video conference)

This Civil Miscellaneous Appeal has been filed challenging the fair and decretal order dated 02.09.2009 passed in



MCOP.No.221 of 2006 by the Motor Accidents Claims Tribunal, Principal District Judge, Vellore.

2. The case in brief is as follows:

On 22.10.2005 at 12.00 am, Arulselvi was travelling in the Maxi Cab bearing Registration No.TN-23-H-4669 towards Karimangalam to Dharmapuri. At that time, a lorry bearing Registration No. TN-37-X-8532 driven by its driver in a rash and negligent manner and hit Arulselvi as a result of which, Arulselvi died on the spot and other injured persons were admitted in Dharmapuri Government Hospital. The first and third respondent remained ex-parte before the Tribunal. The parents of the deceased/Arulselvi are the claimants before the learned Principal District Judge/ Motor Accident Claims Tribunal, Vellore.

3. Mr.C.Prabhakaran, the learned counsel for the appellants has submitted his arguments. As per his submissions, at the time of accident, the daughter of the claimants Arulselvi/deceased was working as a teacher in Mary's Nursery Primary School and she was earning a sum of Rs.7,000/- per month as salary. The claimants/parents were dependent on her. While calculating the compensation, the Tribunal had not considered the income of the deceased/Arulselvi, therefore, the award granted by the Tribunal was on the lower side. Aggrieved by the same, the claimants as appellants had moved this Court and preferred this appeal seeking enhancement of the compensation.

4. Mr.G.Udaya Sankar, learned counsel for the second respondent/Insurance Company has submitted his arguments. As per his submissions, the driver of the offending vehicle did not have valid driving licence. He also denied the nature of accident. It is the further contention of the second respondent/Insurance Company that due to the violation of policy conditions, the second respondent/Insurance Company is not liable to pay compensation. He further submitted that considering the cost of living prevailing at the time of the accident, the Tribunal had fixed the notional income of the deceased and calculated the compensation had arrived at a reasonable award. This appeal lacks merit and it has to be dismissed.

5. In order to prove the claim, on the side of the claimants witnesses were examined as P.W1 to P.W.3 and documents Ex.P.1 to Ex.P11 were marked and on the respondent's side, R.W.1 to R.W.5 were examined and Ex.R1 to Ex.R6 were marked.

6. Point for consideration

Whether the claimants are entitled to enhancement of compensation.



7. Perused the claim petition filed by the appellants as claimants before the Motor Accident Claims Tribunal/Principal District Judge, Vellore, in MCOP No.221/2006, the counter filed by the second respondent/Insurance Company and the order passed by the Motor Accident Claims Tribunal.

8. On perusal of the award passed by the Tribunal, it is found that the deceased was working as a teacher and drawing income of Rs.7000/- per month as per the salary certificate, Ex.P.11. However, the Tribunal did not pay the compensation and consider the same and fixed the notional income of Rs.4500/-. Therefore, the award passed by the Tribunal was on the lower side and the future prospects also not calculated. Aggrieved by the same, the claimants had preferred this appeal. Considering the avocation of the deceased and also taking note of the cost of living prevailing at the time of accident, a sum of Rs.7,000/- is not excessive and the same is fixed as monthly income of the deceased.

9. On the date of death, the deceased was aged 30 years. Therefore, towards future prospects 40% of the income could be added as per the reported decision of the Hon'ble Supreme Court in "Pranay Sethi" case. Loss of Dependency is arrived at as follows:

Monthly Income	=	Rs.7000/-
Future Prospects (40%)	=	Rs.2800/-
Monthly Income	=	2800+7000=9800/-
Deduction towards		
Personal expenses	=	Rs.9800x1/2=4900
	=	9800-4900=4900
Annual income for computation	=	4900x12 = 58800

Taking the multiplier as 17 for the age group 25 to 30 years

Pecuniary Loss	::	Rs.58800 x17
	::	Rs.9,99,600/-

10. No amount was awarded by the Tribunal under the heads like "Transportation" and "Damages to clothes". Therefore, this Court awards a sum of Rs.10,000/- and Rs.2,000/- towards "Transportation" and "Damages to clothes" respectively.

11. The claimants 1 and 2 are the mother/Jothibai and father/Masilamani of the deceased. They had lost their moral support in the evening of their life. Therefore, they are entitled to a reasonable compensation towards "loss of love and affection". Hence this Court awards a sum of Rs.50,000/- towards "Love and Affection".



12. Since the amounts awarded by the Tribunal under the head funeral expenses is just and fair, the same is hereby confirmed. The break-up details of the amounts awarded under various heads are as follows:

Sl. No	Head under which the compensation is awarded	Amounts awarded by the Tribunal	Amounts awarded by this Court
1	Loss of dependency	1,96,800	9,99,600
2	Funeral Expenses	5,000	5,000
3	Transportation	-	10,000
4	Loss of love and affection	-	50,000
5	Damages to clothes	-	2,000
	Total	2,01,800	10,66,600

13. The point for consideration is answered infavour of the appellants/claimants and against the respondent/Insurance Company.

Accordingly, this Civil Miscellaneous Appeal is partly allowed. The second respondent/Insurance Company is directed to deposit the amount, which is determined by this Court in this appeal, to the credit of M.C.O.P.No.221 of 2006 on the file of the Motor Accidents Claims Tribunal, Principal District Judge, Vellore, with accrued interest at the rate of 7.5% per annum from the date of the claim petition till the date of deposit along with costs, through RTGS or NEFT method as held by this Court in (The Oriental Insurance Company Limited, Kannur Vs. Rajesh and two others) 2016 (1) TN MAC 433, after adjusting the amount, if any, already deposited, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the first claimant shall be entitled to withdraw a sum of Rs.5,66,600/- with accrued interest. The second claimant shall be entitled to withdraw a sum of Rs.5,00,000/-. The appellants are directed to pay appropriate Court fees within a period of two months, failing which, they are not entitled to claim interest on the award amount. No costs.

Sd/-

Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar



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To

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1. The Motor Accidents Claims Tribunal /
Principal District Judge,
Vellore
2. The Section Officer,
V.R Section,
High Court, Madras.

+1cc to Mr.G.Udayasankar, Advocate, S.R.No.19840

C.M.A.No.2821 of 2012

SS(CO)
CB(24/09/2021)