IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:17.03.2021

CORAM:

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

CMA.NO.2847 OF 2012

1.P.Mani

2.P.Thirupathi

3.P.Meenakshi

4.P.Kavitha ... Appellants/Petitioners

..Vs..

1. N.Jayakumar

2. The New India Assurance Co. Ltd.,
S.N.V.Chambers, 482-483 cross cut road,
Gandhipuram, Coimbatore.

3. Suganthi

4. P.Shyam Prahalathan

5. P.Prabhu

6. P.Premkumar ...Respondents/Respondents

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 21.09.2010 made in M.C.O.P.No.577 of 2005 on the file of I Additional Sub Court, (Motor Accidents Claims Tribunal), Coimbatore.

For Appellants	:	Mr.A.Sivaji
For Respondent No.2	:	Mrs.R.Sreevidhya
Respondents No.1 & 3 to 6	:	No appearance

JUDGMENT

Dissatisfied with the judgment and decree, dated 21.09.2010 in MCOP.No. 577 of 2005 passed by the tribunal awarding compensation of Rs.1,89,040/- along with interest at the rate of 7.5% per annum, the claimants are before this Court for enhancement of compensation.

2. It is the case of the claimants/appellants herein that on 29.04.2004 at about 01.30 p.m, the deceased - Palanisamy was proceeding on by foot, crossing the State Bank road, coimbatore, in front of Sri Ram Lodge from west to east after observing the traffic movements carefully. At that time, a motorcycle bearing Reg. No. TN-38-Q-2756 rode by its rider in a rash and negligent manner came from south to north, dashed against the deceased. Due to the accident, the deceased sustained multiple injuries and immediately taken to Rox Hospital, coimbatore and thereafter admitted at Coimbatore Medical College Hospital, Coimbatore. Inspite of effective treatment, the deceased died on 05.05.2004. The claimants being legal heirs of the deceased, filed a claim petition before the tribunal, claiming compensation of Rs.10,00,000/- for the death of C.Palanisamy.

3. Before the tribunal, on the side of the claimants, three witnesses P.W.1 to P.W.3 were examined and documents viz., Ex.P1 to P7 and X1 & X2 were marked, whereas on the side of the respondents, Ex.R1 & R2 were marked and no witnesses were examined.

4. The Tribunal, based on the oral and documentary evidence, has held that the accident had occurred due to rash and negligence on the part of the rider of the Motorcycle bearing Reg. No. TN-38-Q-2756 and directed the owner of the Motorcycle and insurer of the Motorcycle to pay the compensation of Rs.1,89,040/- jointly and severally to the claimants along with interest at the rate of 7.5% p.a from the date of petition till realization.

5. The learned counsel appearing for the appellants submitted that though the tribunal having found that the deceased was working as revenue inspector, failed to take note of his future service benefit. The tribunal erred in adopting 3 years multiplier on the ground that the deceased will be in service for more than 3 years. The tribunal ought to have taken note of the age of the dependants while fixing the quantum. The deduction of 1/3 towards personal and living expenses for the dependants of the deceased who are more than 5 years is wrong.

6. The learned counsel for the appellant has further submitted that the tribunal ought to have applied the split multiplier method for calculating loss of income. Likewise, the compensation awarded under other heads also very meagre and requires modification by this Court.

7. The learned counsel appearing for the 2nd respondent/Insurance Company objected for enhancement of compensation and submitted that based on the evidence and documents, the tribunal has awarded compensation to the

claimants, which is fair and reasonable and does not require any modification by this Court.

8. Heard the learned counsel appearing for the appellants and the learned counsel appearing for the 2nd respondent/ Insurance Company and perused the materials available on record.

9. The main contention of the appellants/claimants is that the tribunal has calculated the loss of income for the deceased without adopting the split multiplier method.

10. Admittedly, the deceased, at the time of the accident was working as Revenue Inspector. To prove the same, one K.Saravanan, Revenue Inspector in Avinasi Taluk Office was examined as PW3 and through him Ex.X1& X2 /Salary Certificates of the deceased Palanisamy were marked. It is evident from the the said salary certificate the deceased was paid Rs.19,519/- as Gross income. PW1 & PW2 in their evidence, have confirmed the age of the deceased as 55 years at the time of the accident. It is seen from the award, the tribunal instead of taking gross income, has taken the net monthly income of the deceased which is Rs.4,335/- and deducted 1/3 of the income towards personal and living expenses. It is also seen that the tribunal, instead of following the multiplier method, calculated a threefold loss of income considering the remaining three years of service. Further, it is seen that the tribunal has not added the future prospects as per the Principles laid down by the Hon'ble Supreme Court in Sarala Verma's Case, for the age group of the deceased between 50 and 60 years and in permanent job, 15% of the income to the added towards future prospects.

11. It is evident from PW1 & PW2, that the deceased was at the age of 55 as on the date of death. Therefore, the correct multiplier ought to have been adopted is 11. There is some force in the contention raised by the learned counsel for the appellant that the tribunal ought to have adopted split multiplier method. Based on the above, a re-working of the compensation under the heads of loss of earnings is inevitable.

12. Accordingly, taking monthly net income of the deceased at Rs.19,519/-, adding 15 % for future prospects, and deducting 1/3 towards personal and living expenses, the loss of income is calculated at Rs.14,964/- (19,519+15% x 1/3). The deceased was died at the age of 55 years, therefore the remaining service for superannuation is 3 years, hence, by applying 3 years multiplier, the loss of income for three years is calculated at Rs.5,38,704/-. After retirement, the deceased might have been re- employed in any other occupation, had he been alive. Therefore this Court is of the opinion that the remaining multiplier 8 can be considered for the post retiral period. To

calculate the same, 50% of the income assessed can be taken as multiplier. On that basis, the loss of income for 8 years is calculated at Rs. 7,18,272/- (7482 x 12 x 8). Hence, the Loss of dependancy is calculated at Rs.13,56,976/- (5,38,704 + 7,18,272).

13. In addition to the above compensation, this Court grants a sum of Rs.15,000/- towards 'Loss of Estate'. Except the compensation modified by this Court under the above two heads viz., Loss of income and Loss of Estate, the Compensation awarded by under other heads are confirmed.

Thus the award of the tribunal is modified by this Court as follows:

Heads	Compensation awarded by the tribunal Rs.	Compensation modified by this Court Rs.
Loss of Dependancy	1,04,040	13,56,976
Trasnportation and Funeral expenses	30,000	30,000
Loss of consortium to the wife /1st appellant	15,000	15,000
Loss of Love and affection	30,000	30,000
Extra Nourishment	10,000	10,000
Loss of Estate	...	15,000
Total	1,89,040/-	14,56,976/-

The compensation awarded by the tribunal is modified to the aforesaid extent. In respect of other heads, the award passed by the tribunal is confirmed.

14. The owner of the vehicle/1st respondent and the Insurance Company/2nd respondent are directed to deposit the entire compensation amount of Rs. 14,56,976/- jointly and severally, as modified by this Court along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants/claimants are permitted to withdraw the compensation as modified by this Court as per the apportionment fixed by the tribunal along interest and costs, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal.

15. In fine, the Civil Miscellaneous Appeal is allowed to the aforesaid extent. The appellants/claimants are directed to pay the additional court fee for the enhanced compensation amount. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The I Additional Sub Court,
   (Motor Accidents Claims Tribunal),
   Coimbatore.

2. The Section Officer,
   V.R.Section,
   High Court, Madras.

+1cc to Mr.A.Sivaji, Advocate, S.R.No.17611
+1cc to Mrs.R.Sreevidhya, Advocate, S.R.No.17501

CMA.No.2847 of 2012

AK-II(CO)
CS/16/09/2021