IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 21.12.2020
Judgment Delivered on : 12.02.2021

CORAM

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.A.No.2993 of 2012

1. Yasmin Beevi

2. M.Yasirisam (minor)

3. Rasulla Beeve

4. A.M.Ramzan Ali
(Minor rep. By mother &
N.F the first petitioner) ... Appellants/Petitioners

Vs.

1.G.Radhakrishnan
(R1 remained exparte)

2. United India Insurance Co. Ltd.,
C-1 (old No.C-52), First Main Road,
First Floor, Anna Nagar,
Chennai - 600 102. ...Respondents/Respondents

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.4671 of 2007 dated 11.06.2012 on the file of the Chief Judge, Small Causes Court (Motor Accidents Claims Tribunal), Chennai.

For Appellants : Mr.R.Kalaiarasan

For Respondents : Mr.S.Arun Kumar for R2.
R1-Exparte

JUDGMENT
(This case has been heard through video conference)

The Civil Miscellaneous Appeal has been filed challenging the fair and decretal order dated 11.06.2012 passed in MCOP.No.4671 of 2007 by the Chief Judge, Small Causes Court (Motor Accidents Claims Tribunal), Chennai.

2. The case in brief are as follows:

On 10.08.2007 at about 9.00 hours, while the deceased was walking along Sir Thiyagaraya Road, Pondy Bazaar from North to South direction, the rider of the first respondent's motor cycle bearing Reg. No.TN-20-R-7074 rode the same in a rash and negligent manner, dashed against the deceased, as a result of which, he caused fatal accident.

3. The learned counsel for the appellants/claimants submitted his arguments. As per his submissions, the Motor Accidents Claims Tribunal, Chennai failed to appreciate the facts involved in this case as per the rulings of the Hon'ble Supreme Court and Hon'ble High Court regarding fatal Motor Accident Cases. The learned counsel for the appellants/claimants submitted that the Tribunal awarded a sum of Rs.5,000/- towards Funeral Expenses which is a meagre amount. Therefore, the learned counsel for the appellants/claimants seeks Rs.15000/- under the said head. He further submitted that for "loss of Estate" no amount was awarded by the Tribunal. He seeks Rs.50000/- towards loss of estate. He further submitted that the deceased was having parents and two and half months old child and therefore, he seeks Rs.40,000/- each towards "loss of love and affection". He further submitted that if the award amount is increased, the claimants are ready to pay Court fee. At the time of the accident, the deceased was aged 28 years and he was having his own footwear shop and he had income of Rs.6000/- per month. But this fact was not considered by the Motor Accident Claims Tribunal. A nominal income was fixed by the Tribunal. The non pecuniary heads of "pain and sufferings, loss of consortium, loss of love and affection" were not properly considered. Instead of granting a just compensation, the Motor Accident Claims Tribunal had granted a meagre amount as just compensation. Aggrieved by the same, the claimants before the Motor Accident Claims Tribunal, Chennai who are the legal heirs of the deceased viz., Mohammed Ismayel have preferred this Civil Miscellaneous Appeal.

4. The learned counsel for the second respondent/Insurance Company has submitted his arguments. As per his submissions, the Motor Accident Claims Tribunal, Chennai had properly appreciated the facts of the case as per the Ruling of the Hon'ble High Court and Hon'ble Supreme Court regarding the Motor Accidents Claims resulting in fatal accidents. The appellants herein as claimants before the Motor Accident Claims Tribunal had not furnished the proof of income. Therefore, exercising the discretion, the Motor Accident Claims Tribunal had fixed nominal income as Rs.4500/- per month and on the basis of the same, calculated compensation for the legal heirs of the deceased and the non pecuniary head like "loss of love and affection and loss of consortium" were properly assessed and

granted. Therefore, this appeal does not warrant any interference by this Court. The appeal lacks merits and it has to be dismissed.

5. Points for consideration
Whether the appellant/claimant is to be granted enhanced compensation.

6. Perused the claim petition filed by the appellants/claimants before the Motor Accident Claims Tribunal, Chennai in MCOP No.4771/2007, the counter filed by the second respondent/Insurance Company and the order passed by the Motor Accident Claims Tribunal.

7. On perusal of the award passed by the Motor Accident Claims Tribunal, it is found that the accident had taken place in the year 2007 and the enquiry was conducted and the award was passed in the year 2012. At that time, in the absence of proof of income, as per the guidelines issued by the Hon'ble Supreme Court, under the Mahatma Gandhi National Rural Employment Guarantee Act, 2005, the monthly income of labourers had to be reckoned at Rs.190/- per day and for 30 days, it will be less than Rs.6000/-. As per the guidelines of the Hon'ble Supreme Court, if the minimum wage is at Rs.200/- per day, for entire month, it would be Rs.6000/-. Therefore, the annual income would be at Rs.72000/-. As per the ratio laid down by the Hon'ble Supreme Court in Sarla Verma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121, the number of dependents of the deceased has to be considered towards personal income of the deceased. The legal heirs in this case are four. Therefore, one-fourth deduction (6000/- (-) 6000X1/4) will be Rs.1500 and that will be the deduction towards personal expenses of the deceased/Mohammed Ismayil. Rs.4500/- will be the contribution by the deceased towards family expenses. If that is calculated for 12 months, it will be Rs.54000/-. Had the deceased been in any Government Job, he would have earned regular income and only then future prospects had to be taken up. As per the ruling of the Hon'ble Supreme Court reported in National Insurance Co. Ltd., Vs. Pranay Sethi and others reported in 2017 (2) TNMAC 609 (SC), for those in private jobs, future prospects of 40% increase in the salary could be added, upto the age of 40 and 25% for more than 50 years. But those who are in the private jobs, without fixed salary, they are entitled to 25% increase. Therefore, this Court awarded a sum of Rs.13500/- towards future prospects to be added with the annual income of Rs.54,000/-. Therefore, this Court enhanced a sum of Rs.11,47,500/- (54000+13500=67500X17=1147500) towards Loss of Dependency.

8. As per the reported Ruling of the Hon'ble Supreme Court in National Insurance Co. Ltd., Vs. Pranay Sethi and others reported in 2017 (2) TNMAC 609 (SC) various non pecuniary heads such as “loss of consortium, loss of love and affection” had to be considered in the light of the present day cost of living. Applying the said ratio to this case, the deceased was aged 28 years and the wife of the deceased was aged 24 years. Loss of consortium means not only love and affection, it has so many connotations like loss of companionship, loss of marital support and loss of conjugal relationship. Therefore, she has to be compensated appropriately. Therefore, she is granted Rs.1,00,000/- under the head “loss of consortium”. Likewise, the minor daughter was aged two months on the date of death of the deceased/Mohammed Ismayil. She has to be compensated properly for the loss of love and affection. Therefore, this Court awards a sum of Rs.1,00,000/- towards loss of love and affection to the minor daughter. The claimants 1 and 2 are the mother/Rasul Bheevi and father/Ramsan Ali of the deceased who are aged 48 years and 58 years respectively. 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.50000/- each.

9. Considering the submission of the learned counsel for the appellants/claimants, the Tribunal awarded a sum of Rs.5,000/- towards Funeral Expenses and the same is enhanced to Rs.15,000/-. This Court awards a sum of Rs.10,000/- and 1,000/- towards Transport to Hospital and Damages to clothes respectively. This Court enhanced a sum of Rs.50,000/- towards “loss of estate”.

10. The break-up details of the amounts awarded under various heads are as follows:

<table>
<tr><th>Sl. No</th><th>Head under which the compensation is awarded</th><th>Amounts awarded by the Tribunal</th><th>Amounts awarded by this Court</th></tr>
<tr><td>1</td><td>Loss of Dependency</td><td>7,65,000</td><td>11,47,500</td></tr>
<tr><td>2</td><td>Loss of Consortium to the first petitioner</td><td>10,000</td><td>1,00,000</td></tr>
<tr><td rowspan="2">3</td><td>Loss of Love and Affection to the petitioners 3 and 4</td><td rowspan="2">15,000</td><td>1,00,000</td></tr>
<tr><td>Loss of Love and Affection to the second petitioner</td><td>1,00,000</td></tr>
</table>

Sl. No	Head under which the compensation is awarded	Amounts awarded by the Tribunal	Amounts awarded by this Court
4	Loss of Estate	5,000	50,000
5	Funeral Expenses	5,000	15,000
6	Transport to Hospital	-	10,000
7	Damages to Clothes	-	1000
	Total	8,00,000	15,23,500

Accordingly, this Civil Miscellaneous Appeal is allowed. The second respondent/Insurance Company is directed to deposit the amount, which we have determined in this appeal, to the credit of M.C.O.P.No. 4671 of 2007 on the file of the Chief Judge, Small Causes Court (Motor Accidents Claims Tribunal), Chennai, with accrued interest at the rate of 7.5% per annum from the date the appeal was numbered(the claimant/appellants are not entitled to claim the interest for the period in which the memorandum of Appeal were returned for compliance of defects) 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.3,50,000/- with accrued interest. The claimants 3 and 4 shall be entitled to withdraw a sum of Rs.3,50,000/- each . The balance amount of Rs.4,73,500/- is directed to be deposited in a Nationalised Bank in the name of the minor daughter/the second appellant by the first Claimant. The interest thereof shall be withdrawn by the first Claimant once in three months and the same shall be utilised for the welfare of the minor daughter/second appellant. The award amount allotted to the minor daughter of the deceased shall be withdrawn by the minor/second appellant on attaining the age of majority. 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-IV)

//True Copy//

Sub Assistant Registrar

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To

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

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

+1cc to Mr.S.Arunkumar, Advocate, S.R.No.8763

C.M.A.No.2993 of 2012

KK(CO)
CB(11/10/2021)