IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 25.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

CMA.No.257 of 2013

1.Vasantha
2.Neelamegavarnam
3.Thenmozhi
4.Ezhilarasan .. Appellants/Claimants

Vs.

1.Saravanan
2.The Divisional Manager
National Insurance Co.,
Officer's Line, Vellore. .. Respondents/Respondents

This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 21.07.2004 passed in M.C.O.P.No.717 of 2003 by the Principal District Judge, Motor Accident Claims Tribunal, Vellore.

For Appellant : Mr. N.S.Sivakumar

For Respondents : Mr. J.Chandran for R2

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 compensation.

2. The appellants/claimants have filed a claim petition before the Tribunal seeking compensation of Rs.15,00,000/- for the death of one Munisamy, who is the husband of the 1st claimant and father of the 2 to 4 claimants, in a road accident that took place on 23.10.2003.

3. The brief case of the claimant is as follows: On 23.10.2003, when the deceased was travelling in a two wheeler bearing registration No.TN-23-L-2851, from Kaveripakkam towards Ranipet by the left side of the Road, on M.B.T Road, near Veniyanchathiram, a lorry bearing Registration No.AP-03-T-3537

came in a high speed behind the vehicle of the deceased overtook him and as soon as the two wheeler overtaken the lorry, all of a sudden lorry was stopped unexpectedly and in this impact,t he deceased who was 10 feet very close to the said lorry came in contact with the iron rods which were protruding in the alleged lorry poked into the neck of the deceased and thereby, he died on the spot. According to the claimant, the rash and negligent act of the first respondent was the cause of accident and since the first respondent/ owner of the vehicle insured his lorry with the second respondent/ insurance company, both of them are liable to pay compensation.

4. The claim petition was resisted by the insurance company by filing counter affidavit.

5. Before Tribunal, on the side of the claimants, three witnesses were examined as PW1 to PW3 and Ex.P1 to Ex.P8 were marked. On the side of the second respondent, no oral and documentary evidence was adduced. The first respondent remained exparte.

6. After analysing the evidence on record, the Tribunal has awarded a sum of Rs.3,61,500/- under various heads, as extracted hereunder.

Sl No	Heads	Amount in Rs.
1	Loss of income after deducting 1/3 for personal expenses	3,52, 000
2	Loss of consortium	5,000
3	Funeral Expenses	2,000
3	Loss of love and affection & Loss of estate	2,500
	Total	3,61,500

Not satisfied with the quantum of compensation, the claimant has filed the present appeal for enhancement of compensation.

7. Heard the learned counsel for the appellants and the learned counsel for the second respondent/ insurance company and also perused the materials on record.

8. The learned counsel appearing for the appellants/ claimants submitted that the multiplier method adopted by the Tribunal is not proper and also the Tribunal has not awarded future prospects to the deceased for the actual salary income

and the award granted under the conventional heads is also insufficient and hence, he prayed to enhance the compensation.

9. The learned counsel appearing for the second respondent/ insurance company submitted after analysing the evidence and the documents on record, the Tribunal has rightly awarded the compensation amount. Therefore, no other substantial material has been placed before this Court for enhancement of compensation. Hence the instant appeal is liable to be dismissed.

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

11. Point

According to the appellants, the Tribunal has rightly came to a conclusion that due to the negligence on the part of the driver of the offending insured vehicle, accident was occurred and in the present appeal, they sought enhancement of compensation amount. The deceased was working as Head Constable attached to the Superintendent of Police, Vellore and his salary certificate, viz., Ex.P8 has been produced to prove his income and in this regard, PW3 was examined and there is no dispute regarding the salary of the deceased. Based on the salary certificate, the monthly income of the deceased was fixed by the Tribunal at Rs.7,294/- and after deducting 1/3rd amount of Rs.2,600/- towards his personal expenses, monthly income was fixed at (4000 x 12 = Rs.48,000/- per annum) and by taking note of 11 years service is remaining, loss of income has been arrived at Rs.48,000 x 11= Rs.5,28,000/-. There is a wrong calculation on the part of the Tribunal. After deducting 1/4th amount of Rs.1,823/- towards the personal expenses of the deceased, the actual monthly income comes to Rs.5,471/-. Insofar as the future prospects is concerned, the Tribunal has not awarded adequate amount to the claimants and it requires modification. This Court awarded additional amount for future prospects and considering the age of the deceased was 47 years, 25% future prospects has to be taken into account as per the decision of the Honourable Supreme Court in the case of Pranay Sethi reported in 2017 (2) TNMAC 601. The multiplier method adopted by the Tribunal is improper and it requires modification. As rightly pointed out by the learned counsel for the appellants, 11 multiplier was adopted by the Tribunal for the remaining service period, but the Tribunal has failed to consider the decision of the Hon'ble Supreme Court that depends upon the age of the deceased, multiplier method has to be adopted.

12. The learned counsel for the respondent insurance company submitted that the Tribunal has rightly adopted the multiplier 11 for the remaining service period of the deceased.

Thereafter, 50% of the actual salary income has to be taken into account. Additional two years multiplier has to be adopted in the present case on hand. Since the age of the deceased was 47 years on the date of accident, proper multiplier to be adopted in the instant case is '13' , as per the decision rendered in Sarla Varma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. Therefore, the claimants are entitled for 11 multiplier for the service period and 2 years multiplier for the 50% of the actual salary of the deceased. Thus, loss of dependency is calculated as 5,471 + 25% =1,368 + 5471=(6839 x 12 =Rs.82,068 x 11)) = 9,02,748 + (5471/2 = 2736 + 25%= 3420 x 12 x 2) 82,080 = 9,84,828/-. Accordingly a sum of Rs.9,84,828/- is awarded towards " Loss of dependency ".

13. As far as the compensation awarded under the other heads are concerned, the learned counsel appearing for the appellants submitted that the Tribunal without following the decisions of the Honourable Supreme Court, has awarded a very meagre amounts towards “Loss of consortium”, "Funeral Expenses, Love and Affection and “Loss of Estate” and hence the same shall be enhanced.

14. Considering the above submissions and also taking into account the facts and circumstances of the case and fatal injuries sustained by the deceased, this court is of the view that it is just and reasonable to enhance the compensation of Rs.40,000/- towards "love and affection", Rs.15,000/- towards " funeral expenses " and Rs.15,000/- towards "Loss of Estate" respectively. Accordingly, the revised compensation awarded under various heads is extracted hereunder.

Heads	Compensation awarded by the Tribunal	Compensation modified by this court
Loss of dependency	3,52,000	9,84,828 (82,068 x 11 + 3,420 x 12 x 2)
Loss of consortium	5,000	15,000
Love & Affection	2,500	45,000
Loss of Estate	---	15,000
Funeral Expenses	2,000	15,000
Total	3,61,500	10,79,828
Rounded off to		10,80,000

Accordingly, the claimant is entitled to a compensation of Rs.10,80,000/- (Rupees ten lakhs eighty thousand only) along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

15. In the result,

(i) The Civil Miscellaneous Appeal is allowed and the award passed by the Tribunal is enhanced from Rs.3,61,500/- to Rs.10,80,000/-. No costs.

(ii) The second respondent/insurance company is directed to deposit the revised compensation of Rs.10,80,000/- 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 fixed by the Tribunal, after following due process of law.

(iv) The appellants/claimants are directed to pay court fee for the enhanced compensation amount before drafting the decree and the Registry is directed to draft the decree after the receipt of the court fee.

Sd/-
Assistant Registrar(CJ conf)

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Sub Assistant Registrar

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To

1.The Principal District Judge,
Motor Accident Claims Tribunal, Vellore.

2.Section Officer,
V.R.Section, Madras High Court,
Chennai-104.

+1cc to Mr.N.S.Sivakumar, Advocate, S.R.No.19460
+1cc to Mr.J.Chandran, Advocate, S.R.No.19577

CMA. No.257 of 2013

SJ(CO)
CB(26/10/2021)