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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.02.2021

CORAM:

THE HON'BLE Mr. JUSTICE D.KRISHNAKUMAR

Civil Miscellaneous Appeal No.835 of 2011

1.Anjalai,
W/o Moorthy

2.Moorthy,
S/o Dharma Gounder

... Appellants/Claimants

..VS..

1.P.Ramachandran,

2.M/s.United India Insurance Company Limited,
No.14, Whites Road,
Sudharsan Building,
Chennai-600 014.

... Respondents/Respondents

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 16.12.2010 in M.C.O.P.No.17 of 2007, on the file of the Motor Accident Claims Tribunal, Subordinate Court, Madurantagam.

For Appellants : Mr.Goviganesan
For Respondents : Mr.M.J.Vijayaraghavan for R2
No Appearance for R1

J U D G M E N T

The matter is heard through "Video Conferencing".

This appeal has been filed for enhancement of the compensation granted by the Tribunal in award dated 16.12.2010, made in M.C.O.P. No.17 of 2007, on the file of the Motor Accident Claims Tribunal, Subordinate Court, Madurantagam.

2.The appellants herein are the claimant, initially filed M.C.O.P. No.17 of 2007, on the file of the Motor Accident Claims Tribunal, Subordinate Court, Madurantagam, claiming a sum of Rs.7,76,000/- restricted to Rs.5,00,000/- as compensation for the death of their son namely Chandran in the accident that took place on 13.12.2006 at about 2.30 p.m.

3. According to the claimants/appellants herein, on 13.12.2006 at about 2.30 p.m when the deceased student Chandran who was studying 3rd standard in C.S.T School,



Madurantakam, was walking on the mud portion of the road, the car bearing Reg.No. TN-32-M-5555 owned by first respondent driven in a rash and negligent manner and hit against him, causing grievous injuries in his head. He was initially admitted in Government Hospital at Madurantakam and referred to Government Hospital at Chengalpattu for treatment and further referred to Government Rajaji Hospital, Chennai. He was admitted as inpatient from 13.12.2006 to 17.12.2006 and he declared died on 17.12.2006 due to head injury. The accident had taken place only because of the rash and negligent act of the driver namely G.Baskar. Hence, the claimants filed claim petition, claiming compensation for a sum of Rs.5,00,000/-.

4.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the car bearing Reg.No. TN-32-M-5555 belonging to the 1st respondent and directed the 2nd respondent being insurer of the offending vehicle to pay a sum of Rs.1,05,000/- along with interest @ 7.5% per annum as compensation to the appellants.

5. Not being satisfied with the amounts awarded by the Tribunal in the award dated 16.12.2010, made in M.C.O.P. No.17 of 2007, the claimants have come out with the present appeal.

6. The learned counsel appearing for the appellants contended that the deceased was studying in 3rd standard, he is a brilliant student. Due to sudden death, the claimants have got severe mental agony and pain, loss of love and affection and loss of his service to them. Without considering all these factual aspects, the tribunal has awarded a sum of Rs.1,05,000/- as compensation, against the claim of Rs.5,00,000/- without considering the evidence and documents in prospective manner. The tribunal has also erred in not awarding any amount to the claimants towards future prospects because of the loss of their son, therefore the compensation awarded requires enhancement.

7. On the other hand, the learned counsel appearing for the 2nd respondent insurance company denied the mode of accident as narrated by the appellants/claimants and also denied the negligence on the part of the driver of the insured vehicle. Therefore, the appeal is liable to be dismissed.

8. Heard learned counsel appearing for the appellant as well as the 2nd respondent-Insurance Company and perused the materials available on record.

9. On the basis of the factual and rival contentions urged by the learned counsels appearing for the parties concerned, the following points needs to be answered;



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alive would have certainly contributed substantially to the family of the appellants by working hard. In view of the aforesaid reasons, it would be just and reasonable for us to take his notional income at Rs.30,000/- and further taking the young age of the parents, namely the mother who was about 36 years old, at the time of accident, by applying the legal principles laid down in the case of Sarla Verma Vs. Delhi Transport Corporation, the multiplier of 15 can be applied to the multiplicand. Thus, $30,000 \times 15 = 4,50,000$ and 50,000/- under conventional heads towards loss of love and affection, funeral expenses, last rites arrived at Rs. 1,50,000/- towards of loss of income of the deceased."

12. Applying the principles laid down by the Hon'ble Supreme Court in the case referred to supra, this Court is inclined to enhance the award amount to the claimants, who are the parents of deceased seven years old young boy.

13. The tribunal had rejected the claim under the head 'Loss of Income' to the parents/claimants, stating reason that deceased student was a young boy studying 3rd standard, there would not be any loss of income to the parents. In view of the Judgment of the Hon'ble Supreme Court, the deceased boy, had he been alive, would have certainly contributed substantially to the family of the appellants by working hard and reach great heights. Therefore, it would be reasonable to fix notional income of Rs.15000/- and further by taking age of the mother, who was about 35 years old, at the time of the accident, by applying the legal principles laid down in the case of Sarala Verma Vs. Delhi Transport Corporation, the multiplier of 16 is applied. Thus, Rs.2,40,000/- is granted under the head 'Loss of Income'.

14. Further, the tribunal has awarded a sum of RS.1,00,000/- (Rs.50,000/-each to the claimants) towards 'Pain & Mental Agony. The said amount is on the higher side, in the absence of not granting any amount under the head 'Loss of Love and Affection". Though the love and affection of the parents cannot be measured and portrayed in a clear terms of money, it is just proper to award a sum of Rs.20,000/- (Rs.10,000/- each). In view of granting the sum under the head 'Loss of Love and Affection' by this Court, the sum awarded by the tribunal under the head 'Pain and Mental Agony' is deleted. Further a sum of Rs.5000/- awarded by the tribunal for Funeral Expenses is enhanced to Rs.10,000/-.

15. Thus, the compensation awarded by the Tribunal is modified as follows:



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S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Pain and Mental Agony	1,00,000	...	Set aside
2.	Funeral Expenses	5000	10,000	Enhanced
3.	Loss of Love and Affection (Rs.10,000/- each)	...	20,000	granted
4.	Loss of Income	...	2,40,000	granted
	Total	1,05,000/-	2,70,000/-	Enhanced by Rs.165000/

16. In the result, the appeal is allowed and the amount awarded by the Tribunal at Rs.1,05,000/- is enhanced to Rs.2,70,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd respondent-Insurance Company is directed to deposit the enhanced award amount, now determined by this Court, along with interest and costs, less the amount already deposited, within a period of eight weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P. No.17 of 2007. On such deposit, the appellants/claimants are permitted to withdraw the enhanced award amount, now determined by this Court, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The appellant is directed to pay the court fee, if any, for the enhanced amount. The apportionment shall be as fixed by the tribunal. No costs.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Sub Court,
(Motor Accident Claims Tribunal)
Madurantagam.



Copy To

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

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+1cc to Mr.K.Govi Ganesan, Advocate, S.R.No.9782

CMA.No.835 of 2011

GP(CO)
GN(16/09/2021)