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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 19.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

CMA.No.3434 of 2012

1. D.Kuppusamy
 2. K.Devika
 3. K.Mohana
- ... Appellants/ claimants

Vs.

1. R.Selvaraj
 2. The New India Assurance company Limited
No.1, Bharathi Road, Arcot Woodlands Buildings,
Cuddalore.
- ... Respondents/ Respondents

This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 07.12.2010 passed in M.C.O.P.No.1647/2007 by the Chief Judicial Magistrate, Motor Accident Claims Tribunal, Cuddalore.

For Appellants : Mr.R.Muralidharan

For II respondent : Mr.R.Neethiperumal

R1 : Exparte in Tribunal

J U D G M E N T

Aggrieved over the orders passed by the Tribunal, the claimants are before this court to enhance the compensation awarded by the Tribunal.

2. The claimants have filed a claim petition before the Tribunal seeking compensation of Rs.15,00,000/- for the death of one K.Saravanan, son of the first and second claimants and brother of the third claimant, in a road accident that took place on 23.05.2007.

3. The brief case of the claimants is as follows: On 23.05.2007 at about 3.30 p.m., the deceased was travelling in a bus bearing registration No.TN-46-C-2939 as a passenger to go



to Sethiyathoppu, Srimushnam and while the bus was nearing Annur Theepaintha Nachiyar Koil, the driver of the bus drove the vehicle in a rash and negligent manner, thereby the deceased fell down from the bus and sustained grievous injuries all over his body and head and immediately he was taken to Government Hospital, Chidambaram, however he died on the way to hospital. According to the claimants, the rash and negligent driving of the driver of the bus was the cause of accident and since the first respondent/ owner of the vehicle insured his bus with the second respondent/ insurance company, both of them are liable to pay compensation.

4. The claim petition was resisted by the second respondent by filing counter affidavit.

5. Before Tribunal, first claimant and one another witness were examined as PW1 and PW2 respectively and Ex.P1 to Ex.P7 were marked. On the side of the respondents, no oral and documentary evidence was adduced.

6. After analysing the evidence on record, the Tribunal has awarded a sum of Rs.3,40,000/- to the claimants, however, after deducting 50% towards contributory negligence on the part of the deceased, a sum of Rs.1,70,000/- was awarded. The compensation awarded under various heads are extracted hereunder.

Sl No	Heads	Amount in Rs.
1	Loss of dependency (5000x12 - 50% x 11)	3,30,000
2	Transportation charges	5,000
3	Funeral expenses	5,000
	Total	3,40,000
	Deducted 50% towards contributory negligence	1,70,000

Aggrieved over the compensation awarded by the Tribunal, the the claimants have filed the present appeal to enhance the compensation.

7. Heard the learned counsel for the appellant and I have perused the materials on record.

8. The learned counsel appearing for the appellants submitted that the deceased was working as an operator in a cinema theatre and was earning a sum of Rs.7500/- plus R.50/- as daily batta, as per Ex.P7, however, the Tribunal has erred in



fixing the monthly income of the deceased as Rs.5,000/-. Further, he submitted that the age of the deceased was 28 years at the time of accident, but the Tribunal has taken the average age of the claimants and wrongly adopted the multiplier '11' and that the Tribunal has not awarded any amounts towards " Love and affection" and " Loss of estate". He also submitted that the Tribunal has overlooked the evidence of eyewitness namely the PW2 and wrongly 50% contributory negligence on the part of the deceased and the compensation awarded by the Tribunal is very meagre and hence, prayed for enhancement of compensation.

9. The learned counsel appearing for the second respondent/ insurance company submitted the deceased was travelling in the foot board of the bus and hence, the Tribunal has rightly fixed 50% contributory negligence on the part of the deceased. He further submitted that though salary certificate was produced, to prove the same, the employer was not examined on the side of the claimants and hence, the Tribunal has rightly fixed the monthly income of the deceased as Rs.5,000/-. He also submitted that the compensation awarded under the other heads are also just and reasonable and therefore, the award passed by the Tribunal does not warrant any interference by this court.

10. Now the point for consideration is whether the compensation awarded by the Tribunal has to be scaled down.

11. Point

It is contended by the claimants that the deceased was working as an operator in a cinema theatre and was earning a sum of Rs.10,000/- including batta. Ex.P7 salary certificate, issued by the Proprietor of Lakshmi Talkies was produced before the Tribunal. In the salary certificate, it has been stated that the salary of deceased was Rs.7500/- and daily batta was Rs.50/-. However, since the employer was examined to prove the Ex.P7, the Tribunal has rightly fixed the monthly income of the deceased as Rs.5,000/- and the same does not warrant any interference by this court. As per the decision of the Constitution Bench of the Hon'ble Supreme Court of India in National Insurance Company Limited Vs. Pranay Sethi and others reported in 2017 (2) TN MAC 609 (SC), 40% should be added towards future prospects. The age of the deceased was 28 years on the date of accident and therefore, proper multiplier to be adopted in the instant case is '17' , as per per the decision rendered in Sarla Varma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. In the instant case, the deceased was died as a bachelor. In Sarla Varma case (cited supra), at paragraph No.30, 31 and 32, it is held that if the deceased was a bachelor and the claim petition was filed by the parents, the deduction would normally be 50% as personal and living expenses of the bachelor. Thus, loss of



dependency is calculated as $5000 + 2000 - 50\% \times 12 \times 17 = 7,14,000/-$. Accordingly a sum of Rs.7,14,000/- is awarded towards " Loss of dependency ". Apart from this amount, the first and second claimants are also entitled to Rs.40,000/- each towards " loss of love and affection " and Rs.15,000/- each towards "loss of estate" and "funeral expenses" respectively. Further, compensation awarded towards "Transportation charges" is enhanced from Rs.5,000/- to Rs.10,000/-.

12. The contention of the appellants is that, the deceased was travelled in the foot board and therefore, the Tribunal has fixed 50% negligence on the part of the deceased, which is on the higher side. The foot board travelling by the deceased was not disputed by both the parties. However, the negligence is not only on the part of the deceased but also on the part of the insured vehicle. Hence, this court opines that it is appropriate to fix 20% contributory negligence on the part of deceased. Accordingly, the revised compensation awarded under various heads is extracted hereunder.

Sl.No	Heads	Compensation Awarded by the Tribunal	Compensation enhanced/ Awarded by this court
1	Loss of dependency	3,30,000 ($5000 \times 12 - 50\% \times 11$)	7,14,000 ($5000 + 2000 - 50\% \times 12 \times 17$)
2	Loss of love affection to the first claimant	-	40,000
3	Loss of love affection to the second claimant	-	40,000
4	Transportation charges	5,000	10,000
5	Funeral expenses	5,000	15,000
6	Loss of Estate	-	15,000
	Total	3,40,000	8,34,000
		1,70,000 Deducted 50% towards contributory negligence	6,67,200 (Deducted 20% towards contributory negligence)

This amount shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.



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13. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed and the award passed by the Tribunal is enhanced from 1,70,000/- to Rs.6,67,200/-. No costs.

(ii) The 2nd respondent/insurance company is directed to deposit the revised compensation of Rs.6,67,200/- 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 eight 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 made by the Tribunal, after following due process of law.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

mst

To

1.The Chief Judicial Magistrate,
Motor Accidents Claims Tribunal,
Cuddalore.

Copy to:

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

+1cc to Mr.R.Muralidharan, Advocate, S.R.No.10213

CMA. No.3434 of 2012

BR(CO)

CB(30/09/2021)