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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

C.M.A.No.3646 of 2012

1. Saraswathi
2. Maheswari
3. Minor Manikandan
4. Minor Ammu @ Jamuna
Minors 3 & 4 rep. by their
next friend/guardian Saraswathi ...Appellants

Versus

1. K.Nagaraj
2. K.S.Durai
3. The Branch Manager,
M/s. Reliance General Insurance
Co-Ltd.,
Sri Lakshmi complex,
Omalur Main Raod,
Swarnapuri,
Salem - 4.
4. Kanthayee ...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the order and decree dated 03.09.2012 made in M.C.O.P.No.188 of 2010 on the file of the Motor Accidents Claims Tribunal Sub Court, Sankari.

For Appellant : Mr.Suganthan
For Mr.N.Manokaran
For Respondents
For R3 : Mr.C.Bhuvanasundari
For R1,R2, R4 : No appearance

J U D G M E N T

This appeal is laid as against the judgment and decree dated 03.09.2012 passed by the learned Subordinate Judge, Motor Accident Claims Tribunal, Sankari, in M.C.O.P.No.188 of 2010, thereby awarded the compensation to the tune of Rs.5,38,000/-

2. For the sake of convenience, the parties are referred to hereunder according to their litigative status before the Tribunal.



3. The case of the claimants is that on 27.02.2010, when the deceased was travelling as a pillion rider in a bicycle driven by his friend on the left side of the road, the first respondent's driver drove the lorry in rash and negligent manner and hit the back side of the cycle resulting which the deceased fell down and the lorry also capsized over the deceased. Due to which, the deceased sustained grievous injuries and immediately died. He was a heavy vehicle driver and aged about 45 years. He was earning salary of Rs.12,000/- per month. The first claimant is the wife of the deceased and other claimants are their children. Hence they filed claim petition seeking compensation at Rs.12,50,000/-.

4. Resisting the same, the third respondent filed counter by stating that only due to the negligent driving of the deceased and the cyclist, the accident took place as such, the third respondent is not at all liable to pay any compensation to the claimants. The third respondent also denied the age, salary and avocation of the deceased and sought for dismissal of the claim petition.

5. On the side of the claimants, they examined P.W.1 to P.W.3 and marked Ex.A.1 to Ex.A.11. On the side of the respondents, no one was examined and no material has been marked as exhibit. On the basis of the evidence available on records and also considering the submission made by the learned counsel appearing on either side, the Tribunal awarded a sum of Rs.5,38,000/- as compensation payable by the respondents 1 to 3 jointly or severally. Being not satisfied with the quantum of the compensation awarded by the Tribunal, the claimants came forward with the present appeal for enhancement of the award amount.

6. The learned counsel appearing for the appellants/claimants submits that the deceased was a heavy vehicle driver and he was working in V.M.M. Transport owned by one Sellamuthu. He was drawing a sum of Rs.12,000/- per month as salary. The co-driver of the deceased was examined as P.W.3 and he categorically deposed that the deceased was a heavy vehicle driver and he was drawing the salary of Rs.12,000/- per month. Even then, the Tribunal had fixed the salary of the deceased at Rs.4,500/- and also wrongly applied the multiplier of 13 instead of 14, since the deceased was died at the age of 45 years. The fourth respondent is none other than the mother of the deceased, as such there are totally five claimants and the Tribunal ought to have deducted $1/4^{\text{th}}$ of the income for the personal expenses for the deceased. Whereas the Tribunal deducted $1/3^{\text{rd}}$ towards personal expenses for the deceased. The Tribunal also failed to consider the future prospects of the deceased and therefore, he prayed for enhancement of the award amount.



7. Per contra, the learned counsel appearing for the third respondent would submit that the age of the deceased is 46 years and the Tribunal rightly adopted the multiplier method of 13. Though the claimants examined P.W.3, no documentary evidence was produced to prove that the deceased was working as heavy vehicle driver in the V.M.M. Transport under one Sellamuthu. Therefore, the Tribunal has rightly awarded the compensation and it doesn't require any enhancement. Therefore he prayed for dismissal of the appeal.

8. Heard Mr.Suganthan, learned counsel appearing for the claimants and Ms.C.Bhuvana Sundari, learned counsel appearing for the third respondent.

9. The deceased was aged about 45 years and on 27.02.2010, he was met with an accident due to which he sustained grievous injuries and died. The liability is rightly fixed as against the third respondent. In respect of the quantum is concerned, the income of the deceased fixed at Rs.4,500/- by the Tribunal, whereas P.W.3 categorically deposed that the deceased was co-employee working in V.M.M. Transport owned by one Sellamuthu. The deceased was earning the salary of Rs.12,000/- per month including batta.

10. The Tribunal also failed to consider the future prospect of the deceased and deducted 1/3rd for the deceased's personal expenditure. Whereas there are four claimants and the fourth respondent is none other than the mother of the deceased as such, the Tribunal ought to have deducted 1/4th towards personal expenses of the deceased. Therefore, this Court feels that the income of the deceased has to be fixed at Rs.7,000/- per month and deduction to be made 1/4th with 25% of future prospect. More over, the multiplier should be adopted at 14, since the age of the deceased was 45 years at the time of accident. Accordingly, the loss of income for the deceased is calculated as follows :-

$$\begin{aligned} &= [(Rs.7,000/- + 25\%) - 1/4^{th} \text{ income}] \times 12 \times 14 \\ &= (8750 - 2187.50) \times 12 \times 14 \\ &= 6562.50 \times 12 \times 14 = 11,02,500 \end{aligned}$$

Accordingly, a sum of Rs.11,02,500/- has to be awarded under the head of loss of income to the claimants.

11. Apart from that the Tribunal awarded very low compensation under the heads of loss of estate, funeral expenses and consortium. This Court is inclined to grant a sum of Rs.15,000/- towards loss of estate, a sum of Rs.15,000/- towards funeral expenses and a sum of Rs.40,000/- towards consortium. Since amount awarded under the head of consortium, no need to pay any compensation under the head of love and affection.



Accordingly the compensation awarded by the Tribunal stands modified as under :-

Sl.No	Heads	Awarded by the Tribunal	Awarded by this Court
1	Loss of Pecuniary	4,68,000	11,02,500
2	Loss of estate	Nil	15,000
3	Funeral expenses	10,000	15,000
4	Consortium	10,000	40,000
5	Transportation	10,000	10,000
6	Love and affection	40,000	Nil
	Total	5,38,000	11,82,500

12. In the result the Civil Miscellaneous Appeal is partly allowed as follows:-

(i) The award passed by the Tribunal is enhanced from Rs.4,52,000/- to Rs.11,82,500/-

(ii) The award amount will carry the interest at the rate of 7.5% per annum from the date of the claim petition till the date of deposit.

(iii) The claimants and the fourth respondent are entitled to get the modified award amount as follows:-

*** First Claimant - Rs. 5,57,500/-**
Claimants 2 to 4 - Rs. 1,75,000/- each
Fourth respondent - Rs. 1,00,000/-

(iv) The third respondent is directed to deposit the award amount, less the amount, if any, already deposited, along with accrued interest within a period of six weeks from the date of receipt of copy of this Judgment.

(v) On such deposit, the claimants and fourth respondent are permitted to withdraw the amount awarded as above by filing proper application before the Tribunal.

(vi) The appellants/claimants are not entitled to any interest for the condoned delay (default) period, if any.

(vii) The claimants shall pay requisite Court fee before the receipt of the copy of the judgment for the enhanced compensation.



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(viii) There shall be no order as to costs.

Sd/-
Assistant Registrar
Dated: 01.10.2021

*** Corrected as per the
Order dated 05.10.2021
made in C.M.A.3646 of 2012.
Sd/-Assistant Registrar(I)
Dated : 11.10.2021**

//True Copy//

Sub Assistant Registrar

rts

To

1. The Subordinate Judge,
Motor Accident Claims Tribunal,
Sankari.
2. The Section Officer,
V.R.Section,
Madras High Court,
Chennai.

**To be Substituted for the
order already despatched
On 01.10.2021.**

***+1 CC to Mr.N.Manokaran, Advocate, Sr.No. 52416.**

C.M.A.No.3646 of 2012

RLD(CO)
LS(01/10/2021)
SP(21/10/2021)