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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.03.2021

CORAM:

THE HON'BLE Mr. JUSTICE D.KRISHNAKUMAR

CMA No.3393 of 2013

1.V.Kumari

2.A.Chitra

3.V.Bhavani

...Appellants/Claimants

..vs..

1.K.Amsavani

2.Reliance General Insurance Co.Ltd.,
Motor Third Party Claims Cell
No.6, Haddos Road,
Reliance House, 6th Floor,
Chennai-600006.

...Respondents/Respondents

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 27.04.2011 made in M.C.O.P.No.258 of 2009, on the file of the Principal Subordinate Judge (Motor Accidents Claims Tribunal), Chengalpattu.

For Appellants : M/s.S.S.Swaminathan

For Respondents: Mr.S.Arunkumar -R2
Notice Unserved -R1

J U D G M E N T

The matter is heard through "Physical Hearing".

Dissatisfied with the judgment and decree, dated 27.04.2011, passed by the tribunal awarding compensation of Rs.1,60,000/- along with interest at the rate of 7.5% per annum, the claimants are before this Court for enhancement of compensation.

2.It is the case of the claimants/appellants herein that on 10.07.2009 at about 4.00PM while the deceased Vedhagiri was



standing on the mud portion of GST Road opposite to Thomas Tea shop at Srinivasapuram, Guduvancheri, the driver of the 1st respondent Indica Car bearing Reg.No. TN20-AZ-4165 drove the same in a rash and negligent manner and which came at a dangerous speed from Tambaram towards Chengalpattu, dashed against the deceased. Thereby the deceased sustained grievous injury and died on the way to hospital. The legal heir of the deceased have filed a claim petition before the tribunal, claiming compensation of Rs.10,00,000/- for the death of the caused to the deceased due to the said accident.

3. Before the Tribunal, the wife of the deceased was examined as P.W.1 and Exhibits P1 to P5 were marked on the side of the claimants whereas no evidence was examined and no documents were marked on the side of the respondents.

4. After analyzing both oral and documentary evidences, the tribunal came to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the 1st respondent's vehicle and being the insurer of the said offending vehicle, directed the 2nd respondent/ insurance company to pay the compensation of Rs.1,60,000/- as total compensation along with interest at the rate of 7.5% p.a from the date of petition till realization.

5. The learned counsel appearing for the appellants submitted that the tribunal erred in fixing the income of the deceased as Rs.3000/- in spite of documentary evidence. The tribunal ought to have fixed the income of the deceased at Rs.7500/- per month as per the decision of the Hon'ble Division Bench of this Court. The further grounds raised by the learned counsel for the appellants is that the tribunal erred in awarding very meagre amount towards loss of consortium and loss of love and affection. Therefore, the compensation awarded by the tribunal requires to be enhanced.

6. On the other hand, the learned counsel appearing for the 2nd respondent /insurance company submitted that the amount awarded under each heads by the tribunal are based on the settled principles of law laid down by the Hon'ble Supreme Court and this Court. Hence the quantum arrived at by the Tribunal does not require any interference by this Court.

7. Heard the learned counsel appearing for the appellants and the learned counsel appearing for the 2nd respondent/ Insurance Company and perused the materials available on record.



8. The main ground raised by the learned counsel for the appellants is with regard to the monthly income fixed by the tribunal and the multiplier adopted for calculating loss of income. On perusal of the award though the claimants have marked document Ex.P5/Certificate issued by the Civil Engineer indicating monthly income of the deceased as Rs.10,000/-, the tribunal has fixed monthly income at Rs.3000/- as there is no supporting document to prove the said certificate/Ex.P5. The learned counsel for the appellants made a submission that a sum of Rs.7500/- can be fixed as per the decision of the Hon'ble Division Bench of this Court. Considering the year of the accident which is of the year 2009 and avocation of the deceased who was doing mosaic laying work, it would be proper to fix the monthly income at Rs.6,500/-. Further, as per Ex.P2/Postmortem certificate, the age of the deceased was 60 years at the time of accident, hence for the said age group, the proper multiplier to be adopted as per the decision made in the Sarala Verma's case is 7, but the tribunal has wrongly adopted the multiplier. By applying the above principles, the sum awarded by the tribunal under the head 'Loss of Estate and Pecuniary Benefits' is modified and granted compensation under the head 'Loss of Pecuniary Benefits' at Rs.3,64,000/- (6500 x 1/3 x 12 x 7) and 'Loss of Estate' at Rs.15,000/- under separate heads.

9. Considering the age of the deceased, the sum awarded by the tribunal under the heads Loss of Consortium and Loss of Love and Affection at Rs.15,000/- each is reasonable and the same is confirmed. The compensation awarded under the head 'Transport and Funeral Expenses' at Rs.10,000/- is also confirmed. Thus, the compensation under various heads awarded by the tribunal is modified by this Court is as follows;

Sl.No	Heads	Compensation awarded by the tribunal Rs.	Compensation modified by this Court Rs
1	Loss of Estate and Pecuniary Benefits	1,20,000	...
2	Loss of Pecuniary Benefits	..	3,64,000/-
3	Loss of Estate	...	15,000/-
4	Loss of Consortium to the 1 st appellant	15,000	15,000
5	Loss of Love and	15,000	15,000



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Sl.No	Heads	Compensation awarded by the tribunal Rs.	Compensation modified by this Court Rs
	Affection tot he 2 nd & 3 rd appellants		
6	Transport and Funeral Expenses	10,000	10,000
	Total	1,60,000/-	4,19,000

10. In view of the above modification, the appellants/claimants are entitled compensation for a sum of Rs.4,19,000/- along with interest at the rate of 7.5 % per annum.

11. The 3rd respondent/Insurance Company is directed to deposit the entire compensation amount of Rs.4,19,000/- as modified by this Court along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants/claimants are permitted to withdraw the compensation as modified by this Court as per the apportionment fixed by the tribunal along interest and costs, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal.

12. In fine, the Civil Miscellaneous Appeal is partly allowed to the aforesaid extent. No costs.

Sd/-
Assistant Registrar

// True Copy//

Sub Assistant Registrar

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To

1. The Principal Subordinate Judge
Motor Accidents Claims Tribunal,
Chengalpattu.



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

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+1 CC to Mr.S.S. Swaminathan, Advocate sr 21491

+1 CC to Mr.S.Arunkumar, Advocate sr 21661.

CMA.No.3393 of 2013

SV(CO)
SP(25/11/2021)