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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.08.2021

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
AND
THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

C.M.A.NO.3622 OF 2013

1.Mrs.Bhuvaneswari
2.Nivethitha (Minor)
3.Arun (Minor)
4.Mrs.Gowri
2nd and 3rd minor appellants are represented
by their mother and natural guardian the 1st appellant

... Appellants

Vs

1.P.Ramalingam
2.Royal Sundaram Alliance Insurance Company Ltd.,
No.6, L.B.Road,
Adyar, Chennai.

... Respondents

PRAYER :Civil Miscellaneous Appeal filed under Section 176 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 21.08.2013 made in M.A.C.T.O.P.No.3175/2011 on the file of the Motor Accident Claims Tribunal, III Judge, Small Causes Court, Chennai.

For Appellant : Mrs.Subadra.
For Respondents : R1 - Exparte
R2 - No appearance.

J U D G M E N T

(Judgment of the Court was delivered by N.KIRUBAKARAN, J)

Courts are there only to do justice, whenever a party knocks the doors of this temple of justice.

2.However, in this case, injustice has been caused to the family of the victim by the award passed by the Trial Court. The age of the 2nd and 3rd appellants were merely 2 years and 5 months



respectively. The children lost their life time opportunity of father's love and affection, care and guidance since they lost their father in the accident occurred on 22.03.2011. No amount of compensation could compensate or substitute the father's role. However, shockingly and surprisingly, the trial Court awarded only a sum of Rs.10,000/- each towards loss of love and affection to the children of the victim viz., 2nd and 3rd appellants, who were hardly 2 years and 5 months old. The provisions of Motor Vehicle Act is only to console, comfort and compensate the victims of road traffic accidents. The approach adopted by the Tribunal is contrary to law that needs to be deprecated.

3.Heard Mr.V.Velu, learned counsel for the appellant. The 1st respondent owner was set exparte before the trial Court itself. No notice is necessary to the 1st respondent/owner, as per the Full Bench judgment of the Madhya Pradesh High Court rendered in Mrs.Jamuna Bai V. V. Chhote Singh reported in I (2004) Acc. 190 (FB). The 1st respondent did not appear before the trial Court to contest the matter. The 2nd respondent has been served and their name has been shown in the cause list. However, no one entered appearance for the Second Respondent. Therefore, service is complete and this Court proceeds to pass orders on merits.

4.The appeal has been preferred by the claimants aggrieved over the quantum of compensation of Rs.13,98,600/- for the death of one P.Loganathan, aged about 23 years, earning a sum of Rs.10,000/- in a private concern, in the road accident which occurred on 22.03.2011, when the deceased was travelling as a pillion rider in a two wheeler, which was hit down by the car belonging to the 1st respondent and insured with the 2nd respondent, driven rashly and negligently.

5.The claim petition was filed before the Tribunal and the same was contested by the 2nd respondent alone as the 1st respondent set exparte. To prove that the accident occurred because of the rash and negligent driving of the car belonging to the 1st respondent, PW3 eye witness was examined. The Tribunal taking note of the filing of Ex.P.1-FIR, against the driver of the car and evidence of PW3 eyewitness, rightly came to the conclusion that the accident occurred because of the rash and negligent driving of the car. The Tribunal also noted absence of any rebuttal evidence on the side of the respondents. Therefore, the finding with regard to negligence, as found by the Tribunal, is confirmed.



5.Mr.V.Velu, learned counsel for the appellant would submit that in spite of examining PW2, representative from the company, in which the deceased was working and marking Ex.P.4 salary certificate to prove that the deceased was earning about Rs.10,000/- per month, the Tribunal failed to believe the evidence and erroneously fixed the monthly income at Rs.6,000/-. Therefore, he seeks enhancement of monthly income. Further, he would submit that what has been given under other headings are also very low and required to be increased.

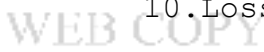
6.A perusal of the award would show that the Tribunal fixed Rs.6,000/- as monthly income. The accident occurred on 22.03.2011. The Honourable Supreme Court in the judgment delivered in Syed Sadiq Vs.United India Insurance Company, reported in 2014 (1) TNMAC 459, fixed the monthly income at Rs.6,500/- for a vegetable vendor, who sustained injuries in the accident which occurred in the year 2008 whereas, in this case the accident had occurred in the year 2011. Therefore, the monthly income determined by the Tribunal at Rs.6,000/- is erroneous. Taking into consideration the above judgment, this Court re-determines the monthly income at Rs.10,000/-, since it is difficult to get even a servant maid for less than Rs.10,000/-. As per the Constitution Bench's judgment of the Honourable Apex Court in National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC), 40% has to be added as future prospects as the deceased was aged about 23 years and he was working in a private concern. Along with 40% future prospects, the monthly income would be Rs.14,000/- (Rs.10,000/- + 40% of Rs.10,000/-).

7.The size of the family is 4 and therefore, as per the judgment of the Honourable Supreme Court in Sarla Verma & Others .Vs. Delhi Transport Corporation & another, reported in 2009 (2) TNMAC 1 (SC) $\frac{1}{4}$ th has to be deducted towards personal expenses and after deducting $\frac{1}{4}$ th, the monthly income would be Rs.10,500/- (Rs.14,000/- (-) $\frac{1}{4}$ th of Rs.14,000/-).

8.The appropriate multiplier as per the judgment of the Honourable Supreme Court in Sarla Verma & Others .Vs. Delhi Transport Corporation & another, reported in 2009 (2) TNMAC 1 (SC) is "18", as the age of the deceased was 23. Therefore, loss of income would be Rs.22,68,000/- (Rs.10,500/- X 12 X 18).

9.Loss of consortium:

The Tribunal awarded a sum of Rs.50,000/- towards loss of consortium to the 1st appellant and the same has to be reduced to Rs.40,000/- as per the Constitution Bench's judgment of the



10. Loss of love and affection:

11. Funeral expenses:

12.Loss of expectation of life:

13. Transportation charges:

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vehicles are added to our Indian roads. Therefore, bounded duty of every citizen in his own interest and in the interest of his family and the interest of innocent third party, who are using the roads, to be careful in road, so that everybody's life is safeguarded.

18.The role of insurance company has become permanent and essential, in view of the number of road accidents. Though insurance sector has been opened for private sector and many private concerns were entered, even though they are discharging the public function, the victims have to be compensated very swiftly, so that they did not feel the absence of bread winner. Without compensation, many road accident victim's family could not suffer. When such is a position, the 2nd respondent though a private company is discharging public function, deliberately avoided appearance before this Court. Therefore, Rs.1,00,000/- awarded as costs to the Insurance company.

19.Accordingly, this appeal is allowed, enhancing the award of the Tribunal from Rs.13,98,600/- to Rs.26,00,000/- with interest.

Sd/-
Assistant Registrar (I)

//True Copy//

Sub Assistant Registrar

ay/sai
To

1. The Motor Accident Claims Tribunal,
III Judge, Small Causes Court, Chennai.
2. Royal Sundaram Alliance Insurance Company Ltd.,
No.6, L.B.Road, Adyar, Chennai.
(Copy marked for payment of Rs.1,00,000/- as costs)

Copy To
The Section Officer,
VR Section, High Court, Madras-104 (2 Copies)

+1cc to Mrs.Subadra, Advocate, S.R.No.39989

C.M.A.No.3622 of 2013

GSM(CO)
CS/25/11/2021