IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.06.2021

CORAM :

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

CIVIL MISCELLANEOUS APPEAL NO.322 OF 2021

1. S.Sasikala
2. S.Sarmila
3. S.Harinipriya (Minor)
   (Minor third appellant is represented by mother and natural guardian S.Sasikala, the first appellant)

.. Appellants/Claimants

Versus

1. M/s.Shakhi Enterprises
   No.43, V.N. Industrial Estate
   Barathi Colony, 3rd Street
   Peelamedu, Coimbatore - 641 004
   (set exparte before the Tribunal)

2. The New India Assurance Company Limited
   Bombay Mutual Building, 6th Floor
   N.S.C. Bose Road
   Chennai - 600 001 .. Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of The Motor Vehicles Act, 1988 against the Judgment and Decree dated 12.03.2020 made in MACT OP No. 4770 of 2018 on the file of the Motor Accidents Claims Tribunal (on the Chief Judge, Court of Small Causes) Chennai

For Appellants : Mr.K.Suryanarayanan

For Respondents : Mrs.R.Sree Vidhya for R2

JUDGMENT

(Judgment of the Court was delivered by R.Subbiah, J)

Not being satisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal, Court of Small Causes, Chennai in and by the award dated 12.03.2020 made in MACT OP No. 4770 of 2018, the present appeal has been filed by the claimants.

2. The appellants in this appeal are the claimants before the Tribunal. They are the wife and children of the deceased Selvarasu. It is the case of the claimants before the Tribunal that on 03.06.2018 at about 06.00 hours, when the deceased was riding his two wheeler bearing Registration No. TN 19 AF 2972 in G.S.T. Road from Chengalpet to Tambaram, near Nellikuppam Road Junction, a lorry bearing Registration No. TN 37 CQ 0966 came in a rash and negligent manner and dashed against the two wheeler driven by the deceased. In the impact, the deceased sustained multiple injuries all over his body. He was immediately taken to SRM Medical College and Hospital and Research Centre, Potheri for treatment. However, inspite of treatment, he succumbed to the injuries at about 08.05 hours on the same day.

3. It is the further case of the claimants that the deceased was aged 53 years at the time of accident. It is further stated that the deceased was the Proprietor of Nala Caterers, Urapakkam and earning a sum of Rs.1,50,000/- per month. Therefore, the claimants have filed the claim petition claiming a sum of Rs.2 crores as compensation for the death of the deceased Selvarasu as against the owner of the lorry/first respondent and it's insurer/second respondent herein.

4. The claim petition was resisted by the second respondent-Insurance Company by filing a counter statement. It was contended that the accident did not occur in the manner as portrayed by the claimants. According to the claimant, it was the deceased who had driven the two wheeler in a rash and negligent manner and contributed to the accident. It is also stated that the age, income and other particulars furnished in the claim petition are incorrect and therefore, the second respondent-Insurance Company prayed for dismissal of the claim petition.

5. Before the Tribunal, in order to prove the averments made in the claim petition, the first claimant, wife of the deceased, examined herself as PW1 and an eye witness to the accident was examined as PW2 besides marking 33 documents as Ex.P1 to P33. On behalf of the respondents in the claim petition, neither any witness was examined nor any document was marked.

6. The Tribunal, upon analysing the oral and documentary evidence, concluded that the accident had occurred due to the rash and negligent driving by the driver of the lorry bearing Registration No. TN 37 CQ 0966, owned by the first respondent and insured with the second respondent. By coming to such concusion, the Tribunal has calculated the compensation payable to the claimants and awarded a total sum of Rs.60,81,600/- in

their favour. The break-up details of the compensation awarded by the Tribunal is tabulated hereunder:-

Loss of future dependency	Rs.60,01,600.00
Loss of love and affection (Rs.15000 X 3)	Rs. 5,000.00
Loss of consortium (for first claimant)	Rs. 20,000.00
Funeral expenses	Rs. 15,000.00
Total	Rs.60,81,600.00

7. Now, it is the submission of the counsel for the appellants/claimants that before the Tribunal, it was claimed by the claimants that the deceased was earning a sum of Rs.1,50,000/- per month through his catering business. In order to prove the income, the claimants have also produced various documentary evidence such as Pan Card, income tax statement/returns, bank statement, agreements entered into with various customers etc., under Exs. P11 to P23. Among those documents, the copies of Income Tax Returns for the period from 2015-2016, 2016-2017 and 2017-2018 were marked under Ex.P12 to prove the income of the deceased. According to the counsel for the appellants, the income tax returns filed under Ex.P12 would show that the income of the deceased was increasing every year. While so, the Tribunal ought to have taken the income tax return submitted by the deceased just prior to his death namely the return for the year 2017-2018. Instead of doing so, the Tribunal has taken the average income from the three years and arrived at a sum of Rs.7,45,303/- as loss of income per year and made calculation on that basis, which has resulted in awarding an inadequate compensation under the head 'loss of dependency'. The learned counsel for the appellants therefore prayed for enhancing the compensation amount by taking the income of the deceased as Rs.10,25,385/- as reflected in the income tax return for the year 2017-2018.

8. Per contra, the learned counsel appearing for the second respondent- Insurance Company would contend that the Tribunal has awarded a fair and reasonable amount as compensation and it does not call for any interference of this Court. It is her further contention that even after the death of the deceased, the first claimant is continuing the catering business, while so, there is no loss of income to the claimants. It is also submitted that in order to prove that the first claimant is continuing the business, documents are available with the second respondent-Insurance Company in the form of audited report which would only show that the catering business run by the deceased was not closed or discontinued after his death. Even though the audited report has not been filed before the Tribunal, now the second respondent has filed the said

document before this Court to show that even after the death of the deceased, the first appellant is continuing the catering business. The learned counsel for the second respondent-Insurance Company therefore would contend that the question of enhancing the compensation amount at the instance of the appellants need not be considered by this Court. She therefore prayed for dismissal of the appeal.

9. In reply to the submission of the learned counsel for the second respondent, the learned counsel for the appellants would contend that the second respondent-Insurance Company has not raised any plea with regard to the continuance of the catering business carried on by the deceased by the claimants. When there is no defence raised before the Tribunal with regard to the status of the catering business run by the deceased, the respondent cannot be permitted to raise such a defence in this appeal. Furthermore, the learned counsel for the appellant would contend that the first appellant/first claimant is a Doctor by profession. When that be so, it is highly doubtful as to whether the first claimant could carry on the catering business of the deceased by abandoning her profession as a Doctor. Therefore, the learned counsel for the appellants prayed this Court to reject such a defence raised by the second respondent-Insurance Company.

10. Keeping the submission of the counsel for both sides, we have carefully perused the materials placed on record.

11. As regards the plea of the second respondent-Insurance Company with regard to the continuance of the catering business by the claimants even after the death of the deceased, at the first blush, such a defence has not been raised by the second respondent-Insurance Company before the Tribunal. The Tribunal has no occasion to deal with such a defence raised before this Court by the second respondent-Insurance Company. Even otherwise, it is not known as to whether the first claimant, who is a Doctor by profession, is temporarily continuing the business of the deceased to conclude the existing contracts or she had abandoned her profession as a Doctor and taking up the catering business. During the course of argument in this appeal, the learned counsel for the second respondent-Insurance Company contended that she has documentary evidence in the form of audit report to substantiate such a defence. In any event, when the defence as to the continuance of the catering business by the claimants even after the death of the deceased has not been taken before the Tribunal, it is futile on the part of the second respondent-Insurance Company to raise such a defence in the present appeal filed by the claimants seeking enhancement of the compensation amount awarded by the Tribunal.

12. It is the case of the appellants-claimants that the deceased was earning substantially through his catering business and to prove the same, Income Tax Returns for the assessment years 2015-2016, 2016-2017 and 2017-2018 have been filed under Ex.P12. As per Ex.P12, the deceased had disclosed his income for the aforesaid three assessment years as follows:-

Assessment year	Gross Income	Tax paid	Net income
2015-2016	Rs.5,61,611.00	Rs.30,970.00	Rs.5,30,641.00
2016-2017	Rs.7,49,572.00	Rs.69,690.00	Rs.6,79,852.00
2017-2018	Rs.11,73,216.00	Rs.1,47,831.00	Rs.10,25,385.00

13. The Tribunal also considered the aforesaid documentary evidence under Ex.P12. However, the Tribunal had taken the average of the net income by dividing it by 3 to arrive at a sum of Rs.7,45,303/- as the annual income of the deceased. In our considered view, the net income of the deceased is scaling up year after year. Therefore, there is no justification on the part of the Tribunal to take an average of the deceased. Even otherwise, the income tax return submitted by the deceased just prior to his death will be the determining factor for the purpose of computing the loss of income. In the present case, the income tax return filed for the year 2017-2018 will be the determining factor for the purpose of awarding compensation to the claimants. Accordingly, we fix the sum of Rs.10,25,385/- as the annual income of the deceased. Out of this amount, 10% of the income is added towards future prospectus of the deceased taking into account his age. If 10% is added, the annual income of the deceased will be scaled up to (Rs.10,25,835 + Rs.1,02,538) Rs.11,27,323. By deducting 1/3rd amount thereof, a sum of Rs.7,51,548.66 could be arrived. By applying multiplier '11' the total amount payable to the claimants could be (Rs.7,51,548.66 X 11) Rs.82,67,035/- which would be the fair and reasonable amount payable to the claimants towards loss of dependency. Therefore, we enhance the amount of Rs.60,01,600.00 awarded by the Tribunal towards loss of dependency to Rs.82,67,035/-.

14. The Tribunal awarded a sum of Rs.45,000/- towards loss of love and affection to the claimants. Out of the claimants, the third claimant was a minor at the time of the death of the deceased. In any event, the amount of Rs.45,000/- awarded by the Tribunal is inadequate and therefore we scale it up to Rs.40,000/- each to the claimants 2 and 3, being the children of the deceased.

15. The Tribunal awarded a sum of Rs.20,000/- towards loss of consortium to the first claimant/first appellant, which we find is inadequate. We therefore, enhance the compensation

awarded towards loss of consortium from Rs.20,000/- to Rs.40,000/-.

16. The Tribunal has not awarded any amount towards loss of estate, which we determine at Rs.15,000/- to be awarded in favour of the claimants.

Loss of Dependency	Rs.82,67,035.00
Loss of love and affection to claimants 2 & 3	Rs. 80,000.00
Loss of consortium (for first claimant)	Rs. 40,000.00
Loss of Estate	Rs. 15,000.00
Funeral expenses	Rs. 15,000.00
Total	Rs.84,17,035.00

17. In the result, we allow this Civil Miscellaneous Appeal by modifying the compensation awarded by the Tribunal on 12.03.2020 in MACT OP No. 4770 of 2018 by enhancing the compensation amount from Rs.60,81,600.00 to Rs.84,17,035/-. The second respondent-Insurance Company is directed to pay the enhanced compensation amount, which we have determined in this appeal, to the credit of MACT OP No. 4770 of 2018 on the file of the Chief Judge, Court of Small Causes (Motor Accidents Claims Tribunal), Chennai, within a period of six weeks from the date of receipt of a copy of this Judgment with accrued interest. On such deposit, the first claimant shall withdraw a sum of Rs.34,17,035/- and the second claimant shall withdraw a sum of Rs.25,00,000/-. The sum of Rs.25 lakhs being the share of the third claimant, who is a minor, shall be deposited in any one of the Nationalised Banks, till she attains majority. The accrued interest thereof shall be withdrawn by the first claimant once in three months.

Sd/-
Deputy Registrar(ADMN III)

//True Copy//

Sub Assistant Registrar

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To

1. The Chief Judge
   Court of Small Causes
   (Motor Accidents Claims Tribunal)
   Chennai

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

+1cc to Mr.K.Suryanarayanan, Advocate, S.R.No.28305

CMA.No.322 of 2021

LN(CO)
CS/22/11/2021