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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.04.2021

CORAM

THE HON'BLE MR. JUSTICE G.K.ILANTHIRAIYAN

C.M.A.No.532 of 2013
and M.P.No.1 of 2011

1.S.A.Jaffar
2.Jainabeebi
3.Reshma
4.Afrose

... Appellants/Petitioners

-vs-

1.M.Gopi

2.The Oriental Insurance Company Ltd.,
No.364/1, 10th B Main,
Srinivasa Mansion, Jainagar III Block,
Bangalore Town, Karnataka State.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the Judgment and Decree of the Motor Accidents Claims Tribunal (Principal District Judge) at Dharmapuri, dated 18.11.2009 in M.C.O.P.No.409 of 2009.

For Appellants : Mr.P.Valliappan

For Respondents : Mr.M.Krishnamoorthy for R2
R1 Exparte

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree of the Motor Accidents Claims Tribunal (Principal District Judge) at Dharmapuri, dated 18.11.2009 in M.C.O.P.No.409 of 2009.

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 appellants is that on 01.09.2008 when the deceased parked his lorry for some repair works and that the cleaner laided the vehicle towards some direction indicating that the lorry was parked for some repair, the driver of the lorry, the first respondent had driven his vehicle in the rash and negligent manner and dashed against the parked lorry. The deceased was standing in front of the lorry which was parked and due to the said accident, he sustained grievous injuries all over the body. Immediately, he was taken into Shirdi Sai Hospital, Bangalore and he succumbed to the injuries. He was drawing the salary of Rs.15,000/- per month and he died at the age of 23. Hence, the petitioner filed claim petition, since the victim died as a Bachelor.

4. Resisting the same, the respondent has set exparte. On receipt of the Notice, the respondent did not filed any counter and set exparte.

5. On the side of the appellants, examined P.W.1 and P.W.2 and marked Ex.P1 to Ex.P10. On the side of the respondent no one was examined and no exhibits are marked. 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 found that a sum of Rs.2,94,000/- (Rupees Two Lakhs Ninety Four Thousand only) as compensation payable by the respondents with interest at the rate of 7.5% p.a to the claimant. Being not satisfied with the quantum of the compensation awarded by the Tribunal, the appellants come forward with the present Civil Miscellaneous Appeal before this Court for enhancement.

6. The learned counsel appearing for the appellants submits that the petitioner is a driver and his driving license was marked as Ex.P7. At the time of accident the deceased was aged about 23 years. Even then, the tribunal deducted the multiplier method of 11, by considering the age of the 1st claimant, the monthly income of the deceased also taken a plea for a sum of Rs.3000/-, without considering Future Prospects. He further submitted that the Medical Expenses spent by the claimants, is also to be considered by the Tribunal.

7. Per contra, the learned counsel appearing for the respondents would contend that the deceased was taken in Shirdi Sai Hospital, Bangalore and at that time the deceased has no injuries. In fact, the petitioners do not create any Medical Bills for the Medical Expenses of the deceased. He further



submitted that the salary of the driver was only Rs.3000/- and if he drive the vehicle in number of dates of driving will be counted and he was only entitled for batta. Therefore, the tribunal rightly taken a sum of Rs.1000/- as salary per month.

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8. Heard Mr.P.Valliappan, learned counsel appearing for the appellants and Mr.M.Krishnamoorthy, learned counsel appearing for the 2nd respondent.

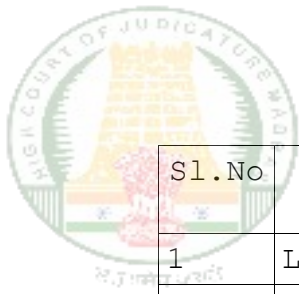
9. The claimants are the father, mother and siblings of the deceased. On 31.08.2008, the lorry which was driven by the deceased and the said lorry was get brake down and which was parked in the left hand side of the road near Paragodu Forest Bangalore to Begepaali. Though the cleaner of the lorry laided the vehicles which were coming in the same direction by indicating that the lorry which was parked by the deceased under repair, even then, the driver of the first respondent drove his lorry in a rash and negligent manner and dashed against the parked lorry.

10. At that juncture, the deceased was standing in front of the parked lorry and due to the accident, he sustained grievous injuries. Immediately he was taken into hospital and he was died. Though the claimants stated earlier the deceased was aged 23 years, in the Post Mortem Report it is revealed that the age of the deceased is 26 years. But the tribunal considering the age of the 1st claimant and adopted the multiplier 11. The age of the deceased has to be taken into account for applying the multiplier method and accordingly, multiplier 18 has to be applied. Further, the deceased died at the age of 26 and as such that the claimants are entitled for his Future Prospects at 40%. The deceased was a Bachelor at the time of accident and as such, he spent for personal expenses from half of his income. Therefore, 50% has to be deducted from his total income.

Monthly Salary (3000 + 40%) x 18 x 12x1/2 = Rs.4,53,600/-

11. The Tribunal awarded only Rs.5000/-, for Love and Affection which is liable to be enhanced to Rs.20,000/- each. The Tribunal awarded only Rs.5000/- for Funeral Expenses which is liable to enhanced to Rs.10,000/-. The Tribunal also failed to award any other compensation on the head of Loss of Expectation of the deceased.

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



Sl.No	Heads	Amount awarded by the Tribunal	Amount awarded by this Court
1	Loss of Pecuniary	Rs.2,64,000/-	Rs.4,53,600/-
2	Funeral Expenses	Rs.5000/-	Rs.10,000/-
3	Loss of Expectation	Nil	Rs.10,000/-
4	Transportation Charges	Rs.5000/-	Rs.5000/-
4	Love and Affection	Rs.20,000/-	Rs.80,000/-
	Total	Rs.2,94,000/-	Rs.5,58,600/-

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

(i) The award passed by the Tribunal is enhanced from Rs.2,94,000 /- to Rs.5,58,600/-.

(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 appellant filed this Civil Miscellaneous Appeal with the delay of 375 days, therefore, the interest for the period 375 of days is deducted.

(iv) The second 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 appellants are permitted to withdraw the amount awarded as above by filing proper application before the Tribunal.

(vi) There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-IV)

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Sub Assistant Registrar

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To

1.The Principal District Judge,
Motor Accidents Claims Tribunal,
Dharmapuri.

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

+lcc to Mr.P.Valliappan, Advocate SR.No.23806

C.M.A.No.532 of 2013
and M.P.No.1 of 2011

JPL (CO)
CB(10/12/2021)