IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 23.04.2021

Coram:

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

C.M.A.No.1139 of 2021
and
C.M.P.No.6852 of 2021

1.D.Saraswathi, W/o P.Duraisamy
2.P.Duraisamy, S/o Late K.Periyasamy
...Appellants/1 & 2 Petitioners

Vs.

1. G.Kalpana, W/o S.V.Gopalakrishna

2. The Manager,
Royal Sundaram Alliance Insurance Company Limited,
Motor Third Party Claim Office,
No.1, Club House Road, IInd Floor, Anna Salai,
Chennai-600 002. ..1 & 2 Respondents/Respondents

3.D.Moganambal, D/o P.Duraisamy
...3rd Respondent/3rd Petitioner

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the order and decree dated 24.10.2019 made in M.C.O.P.No.58 of 2018 on the file of the Motor Accident Claims Tribunal/Additional District Court (FTC), Kanchipuram.

For appellant :Mr.K.Suryanarayanan
For respondents:R-1 set ex-parte before the Tribunal
Mr.M.B.Raghavan for R-2

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

Not being satisfied with the quantum of compensation awarded by the Tribunal, in and by Award dated 24.10.2019 made in M.C.O.P.No.58 of 2018 on the file of the Motor Accidents Claims Tribunal {Additional District Court (FTC) }, Kanchipuram, the present appeal is filed by the claimants for enhancement of the compensation amount.

2. The claimants are the parents and married sistesr of the deceased D.Bhuvaneswari.

3. It is the case of the claimants that on 21.12.2017 at about 8.30 p.m., while the deceased was travelling in a Splendour motor-cycle bearing Registration No.TN-21-AH-4397, on the Chengalpet-Kancheepuram Highway Road, near Pazhayaseevaram, the said two-wheeler was hit by a lorry, bearing Registration No.TN-19-H-8251, as a result of which, the deceased who was travelling as a pillion rider, fell down and sustained grievous injuries and died on the spot itself. The said lorry which had caused the accident, was owned by the first respondent herein and insured with the second respondent herein (Insurance Company).

4. It is the further case of the claimants that the deceased was working at CCTNS in the Office of the Superintendent of Police in Kanchipuram under the Tamil Nadu Police Service. She was receiving salary of Rs.60,000/- p.m. Hence, the claimants have made a claim of Rs.3 crores as compensation before the Tribunal.

5. The said claim petition was resisted by the second respondent-Insurance Company by filing counter statement, stating that the said motor-cycle, in which the deceased was travelling as a pillion rider, was driven in a rash and negligent manner at the time of accident. Further, the deceased had not worn the helmet. Hence, the driver of the lorry cannot be held responsible for the accident. The second respondent-Insurance Company denied the income and the age of the deceased and is not liable to pay the compensation amount. Thus, they prayed for dismissal of the Claim Petition.

6. In order to prove the claim, on the side of the claimants, the father of the deceased was examined as P.W.1. To prove the place of working and her salary, P.W.2 Usharani (Assistant of the District Police Office, Kanchipuram) was examined. One Baskar was examined as P.W.3. Exs.P-1 to P-21 were marked on their side. On the side of the appellant-Insurance Company, no oral or documentary evidence was adduced.

7. On an analysis of the evidence on record, the Tribunal came to the conclusion that the accident had occurred due to rash and negligent driving of the lorry bearing Registration No.TN-19-H-8251 by its driver. The Tribunal ultimately awarded compensation at Rs.69,21,510/- with interest @ 7.5% per annum from the date of claim petition till the date of deposit. The break-up details of the amounts awarded by the Tribunal are tabulated hereunder:

Sl. No.	Heads under which the amounts were awarded by the Tribunal	Amounts awarded by the Tribunal (in Rs.)
1	Loss of income	68,51,510
2	Funeral expenses	15,000
4	Loss of consortium	40,000
5	Loss of Estate	15,000
	Total	69,21,510

8. Now, the present appeal had been filed by the claimants stating that the sum of Rs.69,51,510/- awarded by the Tribunal under the head "Loss of Income" is inadequate compensation. In this regard, the learned counsel appearing for the appellant/claimants submitted that the Tribunal, while calculating the award of compensation under the head "loss of income", had taken Rs.49,900/- as the monthly income and added 50% towards future prospects, and thereby, arrived at the monthly income at Rs.74,850/- [49,900 + 24,950 (50% of 49,900)] = Rs.74,850/-). Thereafter, the Tribunal arrived at the annual income at Rs.8,98,200/- (74,850 x 12). From the said sum of Rs.8,98,200/-, the Tribunal had deducted Rs.92,140/- towards Income Tax and thereby, arrived at the sum of Rs.8,06,060/- {8,98,200 - 92,140}. Since the deceased was a spinster, the Tribunal had deducted 50% of the annual income towards personal expenses, which worked out to Rs.4,03,030/-. Then, after applying multiplier "17", the Tribunal arrived at the "Loss of Income" at Rs.68,51,510/- (4,03,030 x 17).

9. In the above context, it is submitted by the learned counsel appearing for the appellants/claimants that the actual Income Tax paid by the deceased was only at Rs.32,000/-, whereas the Tribunal has deducted Rs.92,140/- towards Income Tax, which had resulted in awarding an inadequate compensation. Thus, the learned counsel appearing for the appellants/claimants submitted that by deducting Rs.32,000/- being tax, from the actual income of the deceased, the compensation under the head Loss of Income has to be re-calculated.

10. Per contra, the learned counsel appearing for the second respondent/Insurance Company supported the award passed by the Tribunal.

11. In view of the submissions made on either side, we find that, the actual income tax to be deducted in this case comes to Rs.32,000/-. If the above Income Tax is applied to the present case, the Loss of Income has to be re-calculated hereunder:-

(a) If Rs.49,900/- is taken as the monthly income of the deceased as rightly fixed by the Tribunal and if 50% is added towards future prospects, the monthly income works out to Rs.74,850/- (49,900 + 50% of 49,900). Then, the annual income works out to Rs.8,98,200/- (Rs.74,850 x 12).

(b) The actual Income Tax to be deducted in this case is Rs.32,000/-.

(c) Thus, the annual income of the deceased (i.e,. after tax deduction) is Rs.8,66,800/-. (Rs.8,98,800 - 32,000).

(d) If 1/2 is deducted towards personal expenses, as rightly done by the Tribunal, the amount works out to Rs.4,33,400/-.

(e) Then, as rightly adopted by the Tribunal, the multiplier is 17, if so applied, the actual loss of income is Rs.73,67,800 (4,33,400 x 17).

12. Thus, the sum of Rs.68,51,510/- awarded by the Tribunal towards Loss of Income, is enhanced to Rs.73,67,800/-.

13. As per the decision of the Supreme Court in the case of National Insurance Company Limited Vs. Pranay Sethi, reported in 2017 (16) SCC 680, the amount of Rs.40,000/- each has to be awarded for the loss of love and affection. If so awarded, the total award amount works to Rs.80,000-. Accordingly, Rs.80,000/- is awarded towards loss of love and affection and consequently, the loss of consortium awarded by the Tribunal at Rs.40,000/- is hereby set aside.

14. Further, the amount of Rs.15,000/- each awarded by the Tribunal under the head "funeral expenses" and loss of estate, are just and reasonable, and the same is hereby confirmed.

15. It is seen from the award of the Tribunal that the Tribunal had not awarded any amount towards transportation charges. Accordingly, a sum of Rs.15,000/- is hereby awarded under the head "transportation charges".

16. Accordingly, the break-up details of the amounts awarded by this Court, in comparison with the Tribunal, are as follows:

Sl.No.	Head under which the amounts are awarded	Amount awarded by the Tribunal	Amount awarded by this Court
1	Loss of income	68,51,510	73,67,800
2	Funeral expenses	15,000	15,000
3	Parental consortium	-	80,000
4	Loss of consortium	40,000	-

Sl.No.	Head under which the amounts are awarded	Amount awarded by the Tribunal	Amount awarded by this Court
5	Transport to hospital	-	15,000
6	Loss of estate	15,000	15,000
	Total	69,06,510	74,92,800

17. In the result, the Civil Miscellaneous Appeal is disposed of, with a direction to the second respondent-Insurance Company to pay the compensation as awarded by this Court at Rs.74,92,800/- (Rupees seventy four lakhs ninety two thousand and eight hundred only) with interest @ 7.5% per annum from the date of claim petition till the date of deposit, within a period of six weeks from the date of receipt of a copy of this judgment, after adjusting the amount, if any, already deposited by the Insurance Company before the Tribunal. The appellants/claimants are directed to pay necessary Court fee, if any, on the enhanced compensation. On such deposit, the appellants/claimants are permitted to withdraw the entire compensation with accrued interest thereon, and costs (as awarded by the Tribunal), as per the apportionment made by the Tribunal. There is no order as to costs in this appeal. Consequently, C.M.P. is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Additional District Judge
The Motor Accidents Claims Tribunal
(Additional District Court-FTC),
Kancheepuram.

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

+1 CC to Mr.K.Suryanarayanan, Advocate sr 25197.

C.M.A.No.1139 of 2021

SSD(CO)
SP(12/11/2021)