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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.07.2021

CORAM:

THE HONOURABLE TMT.JUSTICE S.KANNAMMAL

C.M.A.No.1932 of 2021

Thotti

.. Appellant

Vs.

1. S.Mollakan

2. The Branch Manager,
HDFC ERGO General Insurance Company Limited,
Empire Arcade, No.156/1,
Omalur Main Road,
Opp. to New Bus Stand,
Salem - 636 001.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 05.10.2018 made in M.C.O.P.No.358 of 2017 on the file of the Motor Accidents Claims Tribunal, Additional District and Sessions Court, Krishnagiri.

For Appellant : Mr.S.P.Yuaraj

For R2 : Mrs.R.Sreevidhya

J U D G M E N T

(The matter is heard through "Video Conferencing/Hybrid mode".)

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the Tribunal in the award dated 05.10.2018 made in M.C.O.P.No.358 of 2017 on the file of the Motor Accidents Claims Tribunal, Additional District and Sessions Court, Krishnagiri.

2.The appellant is the claimant in M.C.O.P.No.358 of 2017 on the file of the Motor Accidents Claims Tribunal, Additional District and Sessions Court, Krishnagiri. She filed the said



claim petition claiming a sum of Rs.75,00,000/- as compensation for the death of her son viz., S.Karthick, who died in the accident that took place on 31.07.2016.

3. According to the appellant, on 31.07.2016 at about 19.30 hours (07.30 P.M.), while the said S.Karthick was riding the Bajaj Pulsar motorcycle bearing Registration No.TN 24 AF 3652 from Alapatty to Kodugur on the Krishnagiri - Rayakottai road near Velakalahalli Koot Road, the driver of the tractor bearing Registration No.TN 24 AE 2368 belonging to 1st respondent, drove the same in a rash, reckless, negligent manner at an uncontrollable speed, without sounding horn and without adhering to the rules of the road, came from the opposite direction and dashed on the motorcycle driven by the said S.Karthick and caused the accident. In the accident, the said S.Karthick sustained injuries on the left side of his head, forehead, mouth, lacerated injury on his chest, fracture of his left leg knee region and other grievous injuries. Immediately after the accident, the said S.Karthick was taken to the Government Head Quarters Hospital, Krishnagiri. The duty Doctor examined the said S.Karthick and declared that he died on the way to Hospital. Therefore, the appellant being the Mother of the said S.Karthick filed the above said claim petition claiming a sum of Rs.75,00,000/- as compensation for the death of her son against the respondents, being the owner and insurer of the tractor respectively.

4. The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred due to rash and negligent driving by the driver of the tractor belonging to 1st respondent and directed the respondents jointly and severally to pay a sum of Rs.40,33,856/- as compensation to the appellant.

5. Not being satisfied with the amounts awarded by the Tribunal in the award dated 05.10.2018 made in M.C.O.P.No.358 of 2017, the appellant has come out with the present appeal.

6. The learned counsel appearing for the appellant contended that at the time of accident, the deceased was aged 22 years, working as Driver in Army and was earning a sum of Rs.30,000/- per month. The monthly income fixed by the Tribunal at Rs.24,222/- is meagre. As per the judgment of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC Supreme Court, [Sarla Verma & others Vs. Delhi Transport Corporation & another], the Tribunal ought to have deducted 1/3rd towards personal expenses of the deceased instead of deducting 50%, as the appellant, who is a widowed mother is the only dependant of the deceased. The Tribunal has not awarded any amount towards transportation and loss of love and affection and prayed for enhancement of compensation.



7. The learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal considering Ex.P9/salary details of the deceased, has rightly fixed a sum of Rs.24,222/- as monthly income of the deceased and the same is not meagre. The deceased was a bachelor at the time of accident and the Tribunal has rightly deducted 50% towards personal expenses of the deceased. The enhancement granted by the Tribunal towards future prospects of the deceased at 50% is excessive and the amount awarded by the Tribunal towards filial consortium at Rs.80,000/- is highly excessive. In view of the same, the appellant is not entitled to any enhancement. The total compensation awarded by the Tribunal at Rs.40,33,856/- is highly excessive and prayed for dismissal of the appeal.

8. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 2nd respondent-Insurance Company and perused the entire materials on record.

9. It is the claim of the appellant/claimant in the claim petition that her son was aged 22 years, working as Driver in Army and was earning a sum of Rs.30,000/- per month. To prove the avocation and income of the deceased, the appellant marked the salary particulars of the deceased as Ex.P9. As per Ex.P9, the deceased was getting a sum of Rs.24,222/- as monthly income. The Tribunal considering the same, has fixed a sum of Rs.24,222/- as monthly income of the deceased and the same is not meagre. The deceased was a permanent job holder, as he was working in Army. The Tribunal considering the same and following the judgment of the Hon'ble Apex Court reported in 2017 (2) TNMAC 609 (SC), [National Insurance Company Limited Vs. Pranay Sethi and others], rightly granted 50% enhancement towards future prospects of the deceased. As per Exs.P6 & P9, the deceased was aged 24 years at the time of accident. The Tribunal following the judgment of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC Supreme Court, [Sarla Verma & others Vs. Delhi Transport Corporation & another], rightly applied multiplier '18'. The deceased was a bachelor at the time of accident and the Tribunal has rightly deducted 50% towards personal expenses of the deceased. Thus, by fixing a sum of Rs.24,222/- as monthly income, granting 50% enhancement towards future prospects, applying multiplier '18' and deducting 50% towards personal expenses of the deceased, the Tribunal has awarded a sum of Rs.39,23,856/- as compensation towards loss of dependency and the same is not meagre. The amounts awarded by the Tribunal towards loss of estate and funeral expenses are just and reasonable and hence, the same are hereby confirmed. The Tribunal has awarded a sum of Rs.80,000/- towards filial consortium and the same is excessive. In view of the same, the appellant is not entitled to any amount towards transportation



and loss of love and affection and the total compensation awarded by the Tribunal at Rs.40,33,856/- is not interfered with.

10. In the result, this Civil Miscellaneous Appeal is dismissed and a sum of Rs.40,33,856/- awarded by the Tribunal as compensation to the appellant, along with interest and costs is confirmed. The respondents are jointly and severally directed to deposit the award amount along with interest and costs, less the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.358 of 2017 on the file of the Motor Accidents Claims Tribunal, Additional District and Sessions Court, Krishnagiri. On such deposit, the appellant is permitted to withdraw the award amount along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The appellant is not entitled to any interest for the delay period as per the order of this Court dated 02.07.2021 in C.M.P.No.6993 of 2021 in C.M.A.SR.No.36768 of 2021. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

krk

To

1. The Additional District and Sessions Judge,
Motor Accidents Claims Tribunal,
Krishnagiri.
2. The Section Officer,
VR Section,
High Court,
Madras.

+1cc to M/s.R.Sree Vidhya, Advocate, S.R.No.35849

+1cc to Mr.S.P.Yuaraj, Advocate, S.R.No.36095

C.M.A.No.1932 of 2021

RLD(CO)
SU(11/10/2021)