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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.09.2021

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

C.M.A. No.2017 of 2021

1. Pushpalatha

2. Divya

3. Dinesh

... Appellants/Petitioners

Vs.

1. M.Kannan

[Since R1 remained exparte before the Tribunal,
his presence is dispensed with]

2. ICICI Lombard General Insurance Co. Ltd.,
Arihant Plaza No.84 & 85,
I Floor, Wall Tax Road,
Parrys Corner,
Chennai 600 003.

... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 against the judgment and decree dated 20.02.2020 made in MACTOP.No.6006/2018 on the file of the Motor Accident Claims Tribunal, Chief Judge, Court of Small Causes, Chennai.

For Appellants : M/s.A.Subadra

For Respondents

for R1 : Notice dispensed with
for R2 : Mr.B.Siva Kollappan

J U D G M E N T

[Judgment of the Court was delivered V.SIVAGNANAM, J]

The appeal is heard through video conferencing.

2. Being dissatisfied with the award passed by the Motor



Accident Claims Tribunal/Chief Judge, Court of Small Causes, Chennai, in MOC.P.No.6006 of 2018, the claimants have come forward with this appeal for enhancement of the award amount.

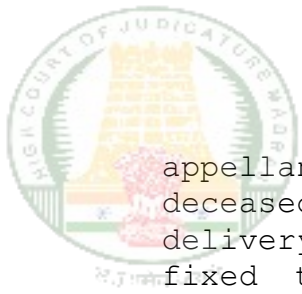
3. It is the case of the appellants/claimants that on 27.05.2018 at about 10.30 p.m., the deceased Gajendran was riding the motorcycle bearing Registration No.TN-22-BS-8191 on Kundrathur-Sriperumbudur Road. When he was nearing Kundrathur Police Station, another motorcycle bearing Registration No.TN-85-F-8328 belonging to the first respondent and insured with the second respondent, came from the opposite direction in a rash and negligent manner and dashed against the motorcycle. Due to the impact, the deceased Gajendran was thrown out of his motorcycle and sustained multiple grievous injuries all over the body and died on the way to Hospital. The legal heirs of the deceased/appellants herein have laid a claim petition for a sum of Rs.75,00,000/-.

4. The claim petition was resisted by the Insurance Company by filing a counter statement denying the manner of the accident, age, avocation and income of the deceased. It is the specific contention of the Insurance Company that the deceased drove the motorcycle with two other persons and that too, without wearing helmet, which are violations of the provisions of the Motor Vehicles Act. Hence, the claim petition may be dismissed.

5. In order to prove the case of the claimants, the first claimant/wife of the deceased examined herself as PW1, besides examining one Ramesh, who is an eye witness to the accident as PW2, and Exs.P1 to P8 were marked. On the side of the Insurance Company, one R.G.Abijith, Legal Manager of the Insurance Company was examined as RW1 and Exs.R1 and R2 were marked.

6. The Tribunal, after analysing the entire evidence, came to the conclusion that the accident had occurred due to the negligent driving of the first respondent's vehicle. By coming to such conclusion, the Tribunal passed an award for a sum of Rs.15,05,000/- to the claimants and directed the Insurance Company to pay the above compensation amount at the first instance, with liberty to recover the same from the first respondent herein. Assailing the award, the claimants have filed the present appeal.

7. It is the submission of the learned counsel for the



appellants/claimants that at the time of the accident, the deceased was aged about 41 years and working as a cylinder delivery boy and earning Rs.30,000/- per month, but the Tribunal fixed the notional monthly income of the deceased only at Rs.10,000/-, which resulted in awarding a meagre amount under the head "Loss of Future Dependency". He further submitted that the amounts awarded by the Tribunal under all the other conventional heads are also on the very lower side, hence, the same needs appropriate enhancement.

8. Per contra, the learned counsel for the Insurance Company made his submissions supporting the award passed by the Tribunal.

9. Considering the cost of living prevalent at the time of the accident and the avocation of the deceased, this Court is of the view that the sum of Rs.10,000/- fixed as monthly income of the deceased is just and fair. Since the deceased falls under the age group of 40-50 years, 25% of the same is added as future prospects. Consequently, the Loss of Dependency arrived at Rs.14,00,000/- $[(10,000 + 2,500) \times 12 \times 14 \times 2/3]$ by the Tribunal, is just and proper and the same is confirmed. Further, the sum of Rs.15,000/- towards Funeral Expenses is also confirmed.

10. In addition to that, this Court is inclined to modify the award passed by the Tribunal under the conventional heads, viz., Rs.15,000/- towards Loss of Estate; Rs.80,000/- towards Filial Consortium by awarding Rs.40,000/- to each of the claimants 2 and 3; Rs.40,000/- towards consortium in favour of the first claimant; In total, the claimants are entitled to Rs.15,50,000/- along with interest at the rate of 7.5% per annum from the date of claim petition till the date of realization.

11. Thus, the total compensation payable to the claimants is re-calculated and tabulated below:

S. No.	Heads under which amounts are awarded by the Tribunal	Amount awarded by the Tribunal in Rs.	Amount awarded by this Court in Rs.
1.	Loss of Future Dependency	14,00,000	14,00,000
2.	Funeral Expenses	15,000	15,000
3.	Loss of Consortium for 1st claimant	30,000	40,000



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S. No.	Heads under which amounts are awarded by the Tribunal	Amount awarded by the Tribunal in Rs.	Amount awarded by this Court in Rs.
4.	Loss of Estate	-	15,000
5.	Loss of Love and Affection	60,000	-
6.	Loss of Filial Consortium to claimants 2 & 3	-	80,000
	Total	15,05,000	15,50,000

12. It is represented by the learned counsel for the appellants/claimants that pending the appeal, the second appellant/ second claimant passed away and her legal heir, viz., the first claimant is already on record. Hence, out of the modified award amount, third claimant is entitled for Rs.5,00,000/- and the first claimant is entitled for the balance amount ie., Rs.10,50,000/-.

13. With regard to liability, the Tribunal found that there are three persons travelled in the offending motorcycle bearing Registration No.TN-85-F-8328, which is against the rules framed under the Motor Vehicles Act and thereby violated the terms and conditions of the Insurance Policy. Hence, the Tribunal directed the second respondent/Insurance Company to pay the award amount at the first instance and thereafter, recover the same from the first respondent/owner of the motorcycle bearing Registration No.TN-85-F-8328. The said finding is hereby confirmed.

14. i) In view of the above modifications, the Civil Miscellaneous Appeal is partly allowed. The second respondent/Insurance Company is directed to deposit the above modified award amount with accrued interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the appellants/claimants are permitted to withdraw the modified award amount as apportioned above, less the amount already withdrawn, if any, together with proportionate interest and costs. No costs. Consequently, connected Miscellaneous Petition is closed.

ii) The second respondent/Insurance Company is permitted to recover the above compensation amount in accordance with law



from the first respondent/owner of the two wheeler Vehicle bearing Registration No. TN-85-F-8328 after making payment to the claimants.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

pvs

To

1. The Chief Judge, Court of Small Causes,
Chennai,
The Motor Accidents Claims Tribunal,
Chennai
2. The Section Officer,
V.R.Section, High Court,
Madras.

+1cc to Mr.M.Malar, Advocate SR.No.44526

C.M.A. No.2017 of 2021

PP(CO)
GN(10/12/2021)