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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CMA.No.1382 of 2020

Rani

...Appellant/Petitioner

Vs.

1.Daniel

2.The National Insurance Co. Ltd.,
II-Floor, Balaji Towers, D.O-II, 11/289,
Ramakrishna Road,
Salem District - 636 007.

..Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the judgment and decree in MCOP.No.44 of 2019 dated 17.03.2020, on the file of the Motor Accident Claims Tribunal / Principal District Judge Court, Salem.

For Appellant	: Mr.T.S.Arthanareeswaran
For Respondents	: Mr.D.Bhaskaran for R2
R1	-Notice Dispensed with vide order dated 19/11/2021

J U D G M E N T

The claimant, not satisfied with the award of a sum of Rs.3,46,800/- for the death of one Sulochana, mother of the claimant in the motor accident that occurred on 09.10.2017 is on appeal, seeking enhancement.

2.According to the claimant, when the said Sulochana was walking along with the left extreme of the road near Old Bus Stand, Salem, the private bus bearing Registration No.TN-30-AE-2227 owned by the 1st respondent driven by its driver in a rash and negligent manner came from behind and dashed against the deceased. As a result of the accident, the deceased suffered grievous injuries in the legs and head. She was taken to the



Government Mohan Kumaramangalam Medical College Hospital, where she was declared as brought dead. Contending that the deceased was working in a silver anklet making unit and also as a maid servant was earning about Rs.7,000/- per month and she was also supporting the claimant financially. Hence, she is entitled to compensation. The owner of the bus remained exparte.

3.The Insurance Company filed a counter contending that the accident did not happen in the manner suggested by the claimant. It was the contention that the deceased suddenly crossed the road leading to the accident. The bus was being driven in a careful manner at a slow speed as the area itself is crowded. The quantum of compensation that was claimed was also termed as excessive. Before the Tribunal, the claimant examined herself as PW1 and two other witnesses were examined as P.W.2 and P.W.3. One Prabhakaran has examined as RW1. One Daniel, owner of the bus was examined as RW2. One Nagarajan was examined as RW3. One Annamalai has examined as RW4. While Exs.P1 to P11 were marked on the side of the claimant, Exs.R1 to R3 were marked on the side of the respondent.

4.On a consideration of the evidence on record, the Tribunal came to the conclusion that the accident occurred due to the rash and negligent driving of the bus and the Insurance Company, as the insurer of the bus, is liable to pay compensation. On quantum, the Tribunal took the monthly income of the deceased at Rs.4,000/-, adopting 10% towards future prospects, arrived at the annual income at Rs.52,800/- The Tribunal deducted 1/3 for the personal expenses and applied a multiplier of 9, since the deceased was aged about 60 years at the time of the accident. On the above calculation, the Tribunal arrived at the total loss of dependency at Rs.3,16,800/-. The Tribunal awarded a sum of Rs.10,000/- towards loss of love and affection, Rs.10,000/- towards funeral expenses and Rs.10,000/- towards transport expenses. Thus, the total award worked out to Rs.3,46,800/-.

5.I have heard Mr.T.S.Arthanareeswaran, learned counsel appearing for the Appellant and Mr.D.Bhaskaran, learned counsel appearing for the 2nd respondent / Insurance Company.

6.Mr.T.S.Arthanareeswaran, learned counsel appearing for the Appellant would vehemently contend that the Tribunal must have taken a monthly income at Rs.7,000/- and not at Rs.4,000/-. He would also plead that it is common knowledge that women who worked in silver anklet units are paid decent daily wages. Therefore, the learned counsel would contend that the fixation of Rs.4,000/- as monthly income is too low.



7. Contending contra, Mr.D.Bhaskaran, learned counsel appearing for the Insurance Company would submit that the claimant being a married daughter will not answer the description of a dependent. The Insurance Company did not project the said defence also because of the fact that the deceased was the mother of the claimant. On the question of income, Mr.D.Bhaskaran would submit that the Tribunal was justified in taking the monthly income at Rs.4,000/- adding 10% towards future prospects. Relying upon the judgment of the Hon'ble Supreme Court in National Insurance Company Vs. Pranay Sethi, the Tribunal had arrived at the total loss of dependency at Rs.3,16,800/-. According to Mr.D.Bhaskaran, the said amount is very reasonable and it does not require any enhancement, considering the status of the claimant also. I have considered the rival submissions.

8. There is no evidence for the income earned by the deceased. She was aged about 60 years. No doubt, women in Salem working in Silver anklet making units will earn about Rs.10,000/- per month, but that by itself will not form basis for the Tribunal to grant compensation or to fix income at a particular rate. There has to be some evidence available on record to show that the deceased was earning a particular amount as income. In the absence of such evidence, the Tribunal will have to go only by notional income. The accident in this case took place in the year 2017. The deceased was aged about 60 years. Therefore, the Tribunal was justified in taking Rs.4,000/- as a notional income. If the fixation of notional income at Rs.4,000/- is sustained, there cannot be any other grievance because the Tribunal has applied the proper multiplier and also a proper percentage for future prospects. The compensation granted on the other heads also cannot be said to be on the lower side. I find, the overall compensation assessed is reasonable and I do not see any reason to interfere with the award of the Tribunal. This civil miscellaneous appeal therefore, fails and it is accordingly dismissed. No costs.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR



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To:-

The Motor Accident Claims Tribunal,
Principal District Court, Salem.

+2cc to M/s.T.S.Arthanareeswaran, Advocate Sr.64264

CMA.No.1382 of 2020

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srg 25/01/2022