IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

C.M.A.No.195 of 2014

1.Prabha Devi Todi

2.Raghul Kumar Todi

3.Naveen Kumar Todi

4.Sakunthala Todi ...Appellants

Vs.

1.M.Dharmaraj

2.United India Insurance Company Limited,
24, Rattan Bazaar,
Chennai - 600 002. ...Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988 to modify the fair and decreetal order dated 30.11.2011 passed in MCOP No.1068 of 2005 by the learned Principal Sub Judge, Motor Accident Claims Tribunal, Tiruppur and enhance the compensation amount by another Rs.2,00,00,000/-

For Appellant : Mr.S.S.Swaminathan

For Respondents : Ms.I.Malar (for R2)

JUDGMENT

[Judgment of the Court was delivered by K.KALYANASUNDARAM, J.]

This appeal has been preferred by the claimants in MCOP No.1068 of 2005 on the file of the Motor Accident Claims Tribunal, Principal Sub Judge, Tiruppur seeking enhancement of compensation.

2.The first claimant is the wife, the claimants 2 and 3 are the sons and the fourth claimant is the mother of the deceased, Kishan Kumar Todi and they filed the claim petition seeking compensation of Rs.5,00,00,000/-. It is their case that on 03.07.2002, when the deceased was returning from Chennai to Tiruppur in Harilal in Opel Astra Car bearing Reg.No.TN-39-P-4840 and at about 03.00 hours, while the car was nearing Aatayampalayam Pirivu in Salem to Perundurai NH 47 Main Road, a Van bearing Reg.No.TN-21-S-5284 came in a rash and negligent manner and rammed the Car. In the accident, the said Kishan Kumar Todi and the Driver Ravichandran died on the spot. The claimants have further stated that the deceased was running Hosiery Business in the name of Jay Tee Exports at Kolkata and J.M.Hosiery Factory at Tiruppur and thereby, he was earning Rs.33,17,750/- per annum.

3.The claim petition was resisted by the respondent Insurance Company contending that the accident had occurred due to the negligence of the driver of the car and hence, the Insurance Company is not liable to pay compensation.

4.During the Trial, both parties have adduced oral and documentary evidence. Upon consideration of evidence adduced by the parties, the Tribunal came to the conclusion that the accident occurred due to the negligence of the driver of the van and awarded compensation of Rs.5,80,000/- together with interest at the rate of 7.5% per annum. Being dissatisfied with the award, the claimants are before this Court.

5.Mr.S.S.Swaminathan, learned counsel for the appellants by placing reliance on Exs.P.5 to P.10, contended that the income taken by the Tribunal is very meager. It is the submission of the learned counsel that Ex.P.5, the Income Tax Returns of the Jay Tee Exports would show that the deceased was earning Rs.21,30,000/- for the financial year 1999-2000; Rs.28,60,000/- for the financial year 2000-2001 and Rs.10,30,000/- for the financial year 2001-2002. It is next contended that in the J.M. Hosiery Factory, the deceased was earning Rs.2,18,824/- for the financial year 1999-2000; Rs,1,82,987/- for the financial year and Rs.97,502/- for the financial year 2001-2002. Over and above, the amounts calculated above have to be taken as income of the deceased.

6.Per contra, the learned counsel appearing for the second respondent Insurance Company Ms.I.Malar would argue that the deceased was not at all proprietor of the Firm, he was one of the partners of the Company. It is also stated that P.W.1, the son of the deceased categorically admitted in his evidence that even after the death of Kishan Kumar Todi, the other partners have been running the business and hence, the Tribunal has rightly fixed the income based on the income tax returns filed by the deceased. According to the learned counsel, the income tax returns of the deceased for the financial year 2000-2001 was filed after the death of the deceased.

7.We have considered the rival submissions of the learned counsel appearing on either side and perused the materials available on records.

8.In the instant case, the claimants have categorically stated in the claim petition that the deceased Kishan Kumar Todi was one of the partners in Jay Tee Exports at Kolkata and J.M.Hosiery Factory at Tiruppur. Exs.P.5 and P.6 have been filed to prove the income of the partnership Firm. The income tax returns filed by the deceased shows that he was earning Rs.1,41,311/- for the year 2001-2002. In the evidence, P.W.1 has admitted that the income tax returns of the deceased was filed after the death of the deceased. P.W.1 has also admitted in the cross examination that after the death of his father, Kishan Kumar Todi, his mother was inducted as partner and partnership Firms are being run, we are unable to agree with the submission of the learned counsel for the appellants that the income of the company has to be taken as loss of income of the claimants for the reason that even after the death of the deceased Kishan Kumar Todi, the claimants would be getting profits from the companies. So, we are of the considered view that the income fixed by the Tribunal as Rs.1,20,000/- per annum is reasonable.

9.Further, the Tribunal apart from 1/3rd deduction towards personal expenses, deducted 50% as family would get income from the deceased. The income tax returns submitted by the deceased would show that he was getting salary of Rs.1,41,310/- for the financial year 2002-2003. Therefore, further deduction of 50% cannot be permitted. This Court awards 25% of the income towards future prospects, hence, the total amount comes to Rs.1,00,000/-. The Tribunal has found that the deceased died at the age of 45 years and hence, as per the decision of Sarala Verma and others vs. Delhi Transport Corporation and another reported in 2009 TN MAC 1, proper multiplier would be '14', but the Tribunal has adopted multiplier '13'. Therefore, by adopting proper multiplier '14', the loss of income is arrived at Rs.14,00,000/- (1,00,000 x 14). The Tribunal has awarded Rs.5,000/- for funeral expenses;

Rs.25,000/- towards loss of consortium and Rs.30,000/- towards loss of love and affection. As per the decision of the Hon'ble Apex Court in the case of Magma General Insurance Co. Ltd., vs. Nanu Ram and others reported in 2018(1) TN MAC 452 (SC), the claimants are entitled to Rs.40,000/- each towards consortium and Filial consortium, which comes to Rs.1,20,000/-. Further, this Court awards Rs.15,000/- towards loss of estate and Rs.15,000/- for funeral expenses. The rate of interest fixed by the Tribunal as 7.5% per annum is unaltered. Hence, the compensation awarded by the Tribunal to the claimants is re-quantified as follows:-

Heads	Rs.
Loss of dependency 1,00,000 x 14	14,00,000/-
Loss of consortium	1,20,000/-
Funeral expenses	15,000/-
Loss of Estate	15,000/-
Total	15,50,000/-

10.In such view of the matter, this Civil Miscellaneous Appeal is partly allowed. The second respondent/Insurance Company is directed to deposit the 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 first appellant/first claimant is permitted to withdraw a sum of Rs.6,50,000/-; the second and third appellants are permitted to withdraw a sum of Rs.4,50,000/- each together with proportionate interest and costs. . No costs.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

skn
To

1.The Motor Accident Claims Tribunal,
Principal Sub Judge, Motor Accident Claims Tribunal,
Tiruppur.

Copy to
The Section Officer
V.R.Section,
High Court, Madras 104.

+1 CC to Mr.S.S.Swaminathan, Advocate sr 63217

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VSNII(CO)
SP(14/02/2022)