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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.02.2021

CORAM:

THE HON'BLE Mr.JUSTICE D.KRISHNAKUMAR

CMA. No.2552 of 2014

1.Manini

2.Tejamati Digal

3.Sibaraj Nayik

... Appellants /Petitioners

..Vs..

1.M/s/Paramount Heavy Carriers,
New No.65, Old No.34, Coral Merchant Street,
Chennai-600001.

2.United India Insurance Co. Ltd.,
No.38, Anna Salai,
Chennai-600002.

...Respondents/Respondents

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 21.04.2014 made in M.C.O.P.No.1527 of 2006 on the file of Special Sub Judge I (Motor Accidents Claims Tribunal), Chennai.

For Appellant	:	Mr.R.Kalai Arasan
For Respondent No.2	:	Mr.D.Bhaskaran
Respondent No.1	:	Notice unserved

JUDGMENT

Dissatisfied with the judgment and decree, dated 21.04.2014 in MCOP.No. 1527 of 2006 passed by the tribunal awarding compensation of Rs.9,31,000/- along with interest at the rate of 7.5% per annum, the claimants are before this Court for enhancement of compensation.

2. It is the case of the claimants/appellants herein that on 25.09.2005 at about 8.00 a.m, the deceased-Jikariya Nayik @ Munna was riding in a Cycle from Melayyanavaram to



Koyambedu on the Poonamallee High Road, while he was proceeding near Nerkundram Bus Stop, the lorry bearing no. TN-04-P-2656 driven by its driver in a rash and negligent manner came from behind and dashed against the deceased. Due to the accident, the deceased died on spot. The claimants being legal heirs of the deceased filed a claim petition before the tribunal, claiming compensation of Rs.12,00,000/- for the death of Jikariya Nayik @ Munna.

3. On the side of the claimants, P.W.1 to P.W.3 were examined and Ex.P1 to P13 were marked. On the side of the respondents, no witnesses were examined and no documents were marked.

4. The Tribunal, based on the oral and documentary evidence, has held that the accident had occurred due to rash and negligence on the part of the driver of the lorry and being insurer of the lorry, Insurance Company is liable to pay compensation to the claimants and awarded Rs.9,31,000/- as compensation along with interest at the rate of 7.5% p.a from the date of petition till realization.

5. The learned counsel appearing for the appellants submitted that the deceased was working as a Lathe Machine Operator, earning Rs.5,000/- p.m and Rs.50/- batta per day, if the deceased survived, his present salary would be Rs.12,400/- However, the tribunal fixed monthly income of Rs.6,000/- including future prospects. According to the learned counsel appearing for the appellants, the deceased was aged only 24 years at the time of the accident therefore, the tribunal ought to have taken entire monthly income along with future prospects. The compensation awarded under other heads are also inadequate, hence seeks enhancement of compensation.

6. The learned counsel appearing for the 2nd respondent/Insurance Company objected for enhancement of compensation and submitted that based on the evidence and documents, the tribunal has awarded compensation to the claimants, which is fair and reasonable and does not require any modification by this Court.

7. Heard the learned counsel appearing for the appellants, the learned counsel appearing for the 2nd respondent/Insurance Company and perused the materials available on record.



8. It reveals from the record that Ex.P1/FIR was registered against the driver of the lorry bearing Reg.No. TN04-P-2656, it is clearly stated that the driver of the lorry was at fault. There is no contra evidence on the side of the respondent to disprove the negligence. In the absence, for the same, the tribunal based on the evidence of PW1 and Ex.P1/FIR has come to the conclusion that the driver of the said lorry was solely responsible for the accident and the insurance policy was also in existence with the 2nd respondent/insurance company, hence the tribunal has directed the 2nd respondent /insurance company is liable to pay the compensation. This Court finds no error on the said decision of the tribunal, accordingly, this Court confirms the negligence and liability fixed by the tribunal.

9. As far as quantum of compensation is concerned, PW1/wife of the deceased has deposed that the deceased was working as a lathe operation. Exhibit P6/Salary certificate and the evidence of PW2/employer of the deceased marked by the claimants also confirms the same. The tribunal has fixed the income of the deceased at Rs.6000/- including future prospects by stating reason that the wife of the deceased receiving pension and adopted multiplier 17. In view of principles laid down by the Hon'ble Supreme Court in Sarala Verma's case, future prospects to be added in addition to the monthly income and as per the age of the deceased who was 24 years at the time of the accident, the multiplier adopted 17 by the tribunal is also required to be modified as multiplier 18. Hence this Court is inclined to modify the compensation under the head loss of pecuniary benefits by taking monthly income at Rs. 6,000/-, adding future prospects at 40%, deducting 1/3 towards personal and living expenses of the deceased and adopting multiplier 18 which comes to Rs.12,09,000/-.

10. The tribunal has not awarded compensation under the head 'Loss of estate', hence this Court grants a sum of Rs.15,000/- under the said head. The compensation awarded for Funeral expenses at Rs.15,000/- is proper, the same is confirmed. The compensation awarded by the tribunal under the heads loss of consortium and loss of love and affection is reduced to Rs.40,000/- each. Thus the award of the tribunal is modified by this Court as follows:



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Heads	Compensation awarded by the tribunal Rs.	Compensation modified by this Court Rs.
Loss of Pecuniary benefits	8,16,000/-	12,09,600
Loss of Consortium	50,000/-	40,000
Loss of Love and affection	50,000/-	40,000
Funeral Expenses	15,000/-	15,000
Loss of Estate		15,000
Total	9,31,000/-	13,19,600/- (rounded of to Rs.13,19,000/-)

11. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the tribunal at sum of Rs. 9,31,000/- is enhanced to Rs. 13,19,000/- along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit.

12. The 2nd respondent/Insurance Company is directed to deposit the entire compensation amount along with interest as modified by this Court, less the amount already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants/claimants are permitted to withdraw the compensation as modified by this Court along interest and costs as per the apportionment fixed by the tribunal, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. The appellants/claimants are directed to pay the court fee for the enhanced compensation amount payable, if any. No costs.

Sd/-

Deputy Registrar

// True Copy //

Sub Assistant Registrar

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To

1. The Special Sub Judge I
Motor Accidents Claims Tribunal,
Chennai.



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

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+1cc to M/s.N.M.Muthurajan, Advocate SR.No.11999

CMA.No.2552 of 2014

SRA (CO)
CB (23/11/2021)