IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

Civil Miscellaneous Appeal No.1926 of 2020

1. Ranjitham
2. Suresh
3. Maheswari
4. Devendiran
5. Kandhayee ... Appellants/Petitioners

Vs.

1. Nagaraj
2. Reliance General Insurance Co., Ltd.,
   3rd Floor, 408 Perundurai Road,
   Erode 638 011. ... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to allow the Civil Miscellaneous Appeal and enhance the award amount in the judgment and decree dated 16.10.2018 made in MACTOP No.528 of 2014, on the file of the Motor Vehicle Accident Claims Tribunal/ Chief Judicial Magistrate Court, Namakkal.

For Appellants : Mr.T.S.Arthanareeswaran

For Respondents : Mr.C.Bhuvanasundari for R2

J U D G M E N T

The claimants who are the wife, children and parents of late Thangavel, who died in a motor accident that occurred on 04.03.2014, are the appellants.

2. It is the case of the claimants that the deceased was riding on his TVS 50 Moped, bearing Registration No.TN-28 T-5941, on Tiruchengode Salem Main Road from south to north on the western side of the road. The rider of the Motor Cycle bearing Registration No.TN-34 U-0439 (Bajaj Pulsar), drove the vehicle

in a rash and negligent manner and dashed against the TVS 50 Moped that was being driven by the deceased. As a result of the impact the deceased Thangavel was thrown out of the vehicle and he suffered grievous injuries. He was taken to Tiruchengode Government Hospital and thereafter he was taken to Krishna Hospital at Tiruchengode, despite treatment the said Thangavel died. Contending that the accident occurred due to the rash and negligent driving of the Motor Cycle by the rider, the claimants sought for compensation of Rs.25,00,000/-.

3. The claim was resisted by the Insurance Company contending that the deceased had contributed to the accident, as he was driving the vehicle in a rash and negligent manner. It was also contended that the deceased did not possess a driving license. The non-impleading of the insurer of the TVS 50 Moped driven by the deceased was also made a ground of defence. The compensation claimed was termed as excessive.

4. Before the Tribunal, the first claimant, wife of the deceased, was examined as P.W.1 and M/s. Pandiyarajan and Ravi were examined as P.Ws.2 and 3. Exhibits C1 to C8 were marked. One Mr.Dinesh, was examined as R.W.1 and Exhibits R1 to R5 were marked.

5. The Tribunal upon a consideration of the evidence on record concluded that the rider of the Bajaj Pulsar Motor Bike bearing registration No. TN-34 U-0439 was responsible for the accident. In coming to the said conclusion, the Tribunal relied upon the First Information Report and the registration of a case against the rider of the Motor cycle. On the said finding, the Tribunal concluded that the Insurance Company is liable to pay the compensation.

6. On the quantum, the Tribunal took the income of the deceased at Rs.5,000/- per month added 10% towards future prospects, it deducted 1/4$^{th}$ for the personal expenses and arrived at a monthly loss of dependency at Rs.4,125/-, applying the multiplier of 11, the Tribunal arrived at the total loss of dependency at Rs.5,44,500/-. The Tribunal also awarded a sum of Rs.1,25,000/- for loss of love and affection, Rs.10,000 for Funeral expenses, Rs.5,000/- for transportation, Rs.25,000/- towards loss of consortium for the first claimant and Rs.53,160/-, on the basis of medical bills, for medical expenses. Thus, the Tribunal awarded a total sum of Rs.7,62,660/-. Terming the compensation awarded by the Tribunal has very meager, the claimants have come with this Appeal.

7. I have heard Mr.T.S.Arthanareeswaran, learned counsel appearing for the appellants and Mrs. C.Bhuvanasundari, learned counsel appearing for the respondent/Insurance Company.

8. Mr.T.S.Arthanareeswaran, learned counsel appearing for the appellants would vehemently contend that the Tribunal was not right in fixing the monthly income at Rs.5,000/-. Considering the fact that the deceased was a mason, he could have earned not less than Rs.750/- per day, according to the learned counsel. Even taking that he had worked for 20 days in a month, he would earn Rs.15,000/- per month easily. The learned counsel would also point out that the compensation awarded under the head of love and affection is also less.

9. Mrs. C.Bhuvanassundari, learned counsel appearing for the respondent/Insurance Company would submit that considering the date of the accident and the lack of evidence to show that the deceased was working as a mason and the Tribunal has justified and taking Rs.5,000/- as the monthly income. She would also point out that apart from granting a sum of Rs.25,000/- towards loss of love and affection, the Tribunal has granted another Rs.25,000/- towards loss of consortium to the first claimant/wife of the deceased.

10. I have considered the rival submissions.

11. The case of the claimants is that the deceased was a mason, even assuming that the deceased was not a skilled labourer, fixation of Rs.5,000/- per month as income for an accident that took place in the year 2014 is really on the lower side. Considering the minimum wages as well as the salaries that are paid to last grade servants, I am of the opinion that the monthly income could be easily taken at Rs.6,000/- per month, adding 10% towards future prospects as the deceased was about 55 years old, the monthly income of the deceased is fixed at Rs.6,600/-, deducting 1/4$^{th}$ for his personal expenses, considering the number of dependants, the monthly loss of income comes to Rs.4,950/-. The annual loss of income would be Rs.59,400/-, applying multiplier 11, the total loss of dependency would be Rs.6,53,400/-.

12. The compensation granted for loss of love and affection is on the lower side and the same is enhanced to Rs.2,00,000/- at Rs.40,000/- for each of the claimants. The awards made under the other heads are not disturbed except the award made under the head of loss of consortium to the first claimant. Since she has been awarded Rs.40,000/- under the head of loss of love and affection and the award of Rs.25,000/- towards loss of consortium would stand deleted.

13. In light of the above the award of the Tribunal is modified and the award is reworked as follows:

| S.No. | Heads | Amount (Rs.) |
|---|---|---|
| 1. | Compensation for loss of dependency | 6,53,400/- |
| 2. | Loss of Love and Affection (Rs.40,000x5) | 2,00,000/- |
| 3. | Funeral Expenses | 10,000/- |
| 4 | Transport Charges | 5,000/- |
| 5 | Medical Expenses (based on Bills) | 53,160/- |
| | Total | 9,21,560/- |

Total compensation thus comes to Rs.9,21,560/-, which is rounded off to Rs.9,20,000/-

14. In view of the above, the appeal is partly allowed, the compensation granted by the Tribunal is enhanced to Rs.9,20,000/-. The Insurance Company is granted 6 weeks time to deposit the enhanced compensation with appropriate interest as granted by the Tribunal to the credit of MCOP No. 528 of 2014. There shall be no order as to costs. It is made clear that the claimants will not be entitled to interest on the enhanced compensation of Rs.1,57,340/- for a period of 383 days in view of the order dated 15.12.2020 in CMP No.12840 of 2020.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

jv

To

1. The Chief Judicial Magistrate,
   Motor Vehicle Accident Claims Tribunal,
   Namakkal.

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

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VG-II(CO)
SB(14/06/2022)