IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated 12.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

CMA.No.3628 of 2014

1. Kanniappan

2. Rajeswari ... Appellants/ Claimants

Vs.

1. Ramkumar

2. The Reliance General Insurance,
No.6, Haddows Road, Reliance House,
6th floor, Nungambakkam, Chennai- 600 006.

... Respondents/ Respondents

This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 21.12.2012 passed in M.C.O.P.No.6 of 2012 by the Chief Judicial Magistrate, Motor Accident Claims Tribunal, Chengalpattu.

For Appellants : Mr.N.Sudharsan
For II respondent : Mr. Bharathi Dason for Mr.S.Arunkumar
Notice served to R1

JUDGMENT

Not satisfied with quantum of compensation awarded by the Tribunal, the claimants are before this court to enhance the compensation awarded by the Tribunal.

2. The claimants have filed a claim petition before the Tribunal seeking compensation of Rs.4,00,000/- for the death of their son namely Ramesh, in a road accident that took place on 05.06.2009.

3. The brief case of the claimants is as follows: On 05.06.2009, while the deceased Ramash was walking along the GST Road at Potheri Village, a speedy lorry bearing registration No.TN-34-C-8037 dashed against the deceased, thereby he succumbed to the injuries on the spot. According to the claimants, the rash and negligent driving of the driver of the lorry was the cause of accident and since the first respondent/ owner of the vehicle insured his lorry with the second respondent/ insurance company, both of them are liable to pay compensation.

4. The claim petition was resisted by the second respondent by filing counter affidavit.

5. Before Tribunal, first claimant and two other witnesses were examined as PW1 to PW3 respectively and Ex.P1 to Ex.P6 were marked. On the side of the respondents, no oral and documentary evidence was adduced.

6. After analysing the evidence on record, the Tribunal has awarded a sum of Rs.2,55,000/- to the claimants. The compensation awarded under various heads are extracted hereunder.

Sl No	Heads	Amount in Rs.
1	Loss of dependency	2,40,000
2	Funeral expenses	5,000
3	Love and affection	10,000
	Total	2,55,000

Aggrieved over the compensation awarded by the Tribunal, the claimants have filed the present appeal to enhance the compensation.

7. Heard the learned counsel for the appellant and the learned counsel appearing for the second respondent/ insurance company. I have perused the materials on record.

8. The learned counsel appearing for the appellants submitted that the deceased was working as a mason and was earning a sum of Rs.10,000/- per month, however, the Tribunal has erred in fixing the monthly income of the deceased as Rs.6,000/- and no amount was added towards " Future Prospects". Further, he submitted that the age of the deceased was 33 years at the time of accident, but the Tribunal has taken the average age of the claimants and wrongly adopted the multiplier '5' and that the Tribunal has not awarded any amounts towards " Love and affection" and " Loss of estate". He also submitted that the compensation awarded under the other heads also very meagre and hence, prayed for enhancement of compensation.

9. The learned counsel appearing for the second respondent/ insurance company submitted that after considering the oral and documentary evidence record, the Tribunal has awarded a just and reasonable compensation and therefore, the award passed by the Tribunal does not warrant any interference by this court.

10. Now the point for consideration is whether the compensation awarded by the Tribunal has to enhanced.

11. Point

It is contended by the claimants that the deceased was working as mason and was earning a sum of Rs.10,000/- per month. However, no proof of income was filed to prove the income of the deceased. Therefore, considering the year of the accident and the age of the deceased, the Tribunal has rightly fixed the monthly income of the deceased as Rs.6,000/- and the same does not warrant any interference by this court. It is true that the Tribunal has not awarded any amount towards Future Prospects. As per the decision of the Constitution Bench of the Hon'ble Supreme Court of India in National Insurance Company Limited Vs. Pranay Sethi and others reported in 2017 (2) TN MAC 609 (SC), 40% should be added towards "Future prospects". The age of the deceased was 33 years on the date of accident and therefore, proper multiplier to be adopted in the instant case is '16' , as per per the decision rendered in Sarla Varma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. In the instant case, the deceased was died as a bachelor. Therefore, 50% of income should be deducted towards personal expenses of the deceased. Thus, loss of dependency is calculated as 6000+ 2400 - 50% x12x17= 8,06,400/-. Accordingly a sum of Rs.8,06,400/- is awarded towards " Loss of dependency ". Apart from this amount, the first and second claimants are also entitled to Rs.20,000/- each towards " Loss of love and affection " and Rs.15,000/- each towards "Loss of estate" and "Funeral expenses" respectively. Accordingly, the revised compensation awarded under various heads is extracted hereunder.

Sl. No	Heads	Compensation Awarded by the Tribunal	Compensation enhanced/ Awarded by this court
1	Loss of dependency	2,40,000	8,06,400
2	Funeral expenses	5,000	15,000
3	Love and affection	10,000	40,000
4	Loss of estate	-	15,000
5	Total	2,55,000	8,76,400

This amount shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

12. In the result,

(i) The Civil Miscellaneous Appeal is allowed and the award passed by the Tribunal is enhanced from 2,55,000/- to Rs.8,76,400/-. No costs.

(ii) The appellants/claimants are directed to pay the necessary court fee for the enhanced compensation, within a period of two weeks from today and the Registry is directed to draft the decree, after receipt of necessary court fee.

(iii) The 2nd respondent/insurance company is directed to deposit the revised compensation of Rs.8,76,400/- with interest at the rate of 7.5.% p.a. from the date of claim petition till the date of deposit, less the amount if already deposited, within a period of six weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made by the insurance company, the claimants are entitled to withdraw the same, as per the apportionment made by the Tribunal, after following due process of law.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

mst
To

1. The Chief Judicial Magistrate, Motor Accident Claims Tribunal,
Chengalpattu.

2. The Reliance General Insurance,
No.6, Haddows Road, Reliance House,
6th floor, Nungambakkam, Chennai- 600 006.

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

CMA. No.3628 of 2014

JP CO
A.SK(28.04.2021)