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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 22.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

CMA.NO.610 OF 2014

1. R. Chitra
2. Minor R.Rakavi
Minor Rep.by next friend and
Guardian mother R.Chitra
3. Lakshmi ... Appellants/Claimants

Vs.

1. R.Udayan
2. S.Saravanabhavan
3. The New India Assurance Co. Ltd.,
1st floor, Amman Complex, 1360 EVN Road,
Erode 638 011. ... Respondents/Respondents

This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 05.07.2012 passed in MCOP No.119 of 2011 by the Principal District Judge, Motor Accident Claims Tribunal, Erode.

For Appellants : Mr.Arun Prasanth
for Mr.M.Guruprasad

For respondentd : Ms. Salomi (R3)

for Mr.Ramesh Babu
Notice unserved to R1 and R2

J U D G M E N T

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

2. The claimants have filed a claim petition before the Tribunal seeking compensation of Rs.20,00,000/- for death of one Ravi, husband of the first claimant and father of the second claimant and son of the third claimant, in a road accident that took place on 18.12.2010.



3. The brief case of the claimants is as follows: On 18.12.2010 at about 12.30 p.m. the deceased Ravi was travelling as a passenger in a bus bearing registration No.TN-33-AM-9429 to go to his home at Pudupalayam, after his work at Erode. The contention of the claimants is that in order to alight at Ganapathipuram four road, the deceased got up his seat and stood at backside foot board and while the bus was nearing Ganapathipalayam four roads, opposite to Thirumurugan Rice Mill, the driver of the bus drove the vehicle rash and negligent manner and dashed against the stationed lorry, as a result of which, the deceased sustained crush injuries on the head and he died on the spot. According to the claimants, the rash and negligent driving of the driver of the bus was the cause of accident and since the second respondent/ owner of the vehicle insured his bus with the third respondent/ insurance company, both of them are liable to pay compensation.

4. The claim petition was resisted by the first respondent/ driver of the bus and the third respondent/insurance company by filing their respective counter affidavit.

5. Before Tribunal, on the side of the claimants, three witnesses were examined as PW1 to PW3 and Ex.P1 to Ex.P9 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.5,94,000/- to the claimants. The compensation awarded under various heads are extracted hereunder.

Sl No	Heads	Award amount in Rs.
1	Loss of dependency 4000- 1/3 x 12x17	5,44,000
2	Loss of consortium to the first claimant	25,000
3	Loss of love and affection	20,000
4	Funeral expenses	2,500
5	Loss of estate	2,500
	Total	5,94,000

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 appellants and the learned counsel appearing for the third respondent. I have perused the materials on record.

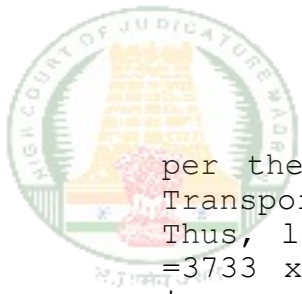
8. The learned counsel appearing for the appellants submitted that the deceased was working as supervisor in "Saarusri construction" and when the claimants produced salary certificate Ex.P8 and the PW3 speaks about the income of the deceased as Rs.8,000/-, the Tribunal has erred in fixing the income of the deceased as Rs.4,000/-. He further submitted that the Tribunal has awarded a very meagre amount as compensation and hence, prayed for enhancement of compensation.

9. The learned counsel appearing for the insurance company submitted that the deceased was aged 34 years on the date of accident and hence, the proper multiplier to be adopted in this case is '16', however, the Tribunal has wrongly adopted multiplier of '17' years. He further submitted that in so far as the other heads are concerned, the Tribunal has rightly awarded a just 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 be enhanced.

11. Point

It is contended by the claimants that the deceased was working as supervisor in Saarusri Construction and was earning a sum of Rs.8,000/- per month. In this regard, one Mr.S.Loganathan was examined as PW3 and he stated that he is running the Saarusri Construction and the deceased was working as supervisor and he paid Rs.8,000/- per month to the deceased. Ex.P8 salary certificate was also produced before the Tribunal. However, the Tribunal has come to the conclusion that no evidence was produced to show that the PW3 was actually running such construction and paying salary to the employees and hence, the evidence of PW3 cannot be given much importance. The above findings of the Tribunal does not warrant any interference by this court. Further, considering the fact that the deceased was working in the construction field and also taking into account the year of accident, the Tribunal has rightly fixed the monthly income of the deceased at Rs.4000/-. 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. There are three dependants and hence, 1/3 of the amount shall be deducted from the income of the deceased towards his personal expenses. The deceased was aged 34 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.. Thus, loss of dependency is calculated as $4000 + 1600 = 5600 - \frac{1}{3} = 3733 \times 12 \times 18 = 7,16,736/-$. Accordingly a sum of Rs.7,16,736/- is awarded towards " Loss of dependency ". Apart from this amount, the claimants are also entitled to Rs.15,000/- towards "loss of estate" and "funeral expenses" respectively. 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	5,44,000	7,16,736
2	Loss of consortium to the first claimant	25,000	25,000
3	Loss of love and affection	20,000	20,000
4	Funeral expenses	2,500	15,000
5	Loss of estate	2,500	15,000
	Total	5,94,000	7,91,736

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 partly allowed and the award passed by the Tribunal is enhanced from 5,94,000/- to Rs.7,91,736/-. No costs.

(ii) The insurance company is directed to deposit the revised compensation of Rs.7,91,736/- 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.

(iii) 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 IV)

//True Copy//

mst

Sub Assistant Registrar



To

1. The Principal District Judge, Motor Accident Claims Tribunal,
Erode.

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Copy To

The Section Officer,
V.R.Section,
Madras High Court, Chennai-104.

+1cc to Mr.C.Ramesh Babu, Advocate, S.R.No.18549

+1cc to Mr.M.Guruprasad, Advocate, S.R.No.18409

CMA. No.610 of 2014

PPA (CO)
PM/12/10/2021