IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.03.2021

Coram

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

CMA No.887 of 2014

1. P.Padma
2. K.Rajamma
3. K.Padma
4. P.Kandhan .... Appellant/Claimants

Vs.

1. B.G.Somashekar
(set exparte before the Tribunal)

2. ICICI Lombard General Insurance Co. Ltd.,
No.140, Nungambakkam High Road, II and III Floor,
Chottabai Centre, Nungambakkam,
Chennai-34. .. Respondents/Respondents

Prayer: Civil Miscellaneous Petition filed under Section 173 of the Motor Vehicles Act against the decree and judgment dated 31.01.2012 passed in MCOP No.271 of 2008 by the Principal District Judge, Motor Accident Claims Tribunal, Thiruvallur.

For Appellant : Mr.K.R.Ponnusamy
for M/s Anand and Surya

For Respondents : Mrs.P.Shobana
for Mrs. R.Sreevidhya (for R2)
Notice unserved to R1

JUDGMENT

Not satisfied with the orders passed by the Tribunal, the claimants have filed the present appeal seeking enhancement of compensation.

2. The claimants have filed a claim petition in .MCOP No.271 of 2008 seeking compensation of Rs.7,00,000/- for the death of one K.Parandhaman, husband of the first claimant, son of the second and fourth claimant and brother of the third claimant, in a road accident that took place on 07.05.2008.

3. The brief case of the claimant is as follows:

On 07.05.2008 at about 6.00 a.m. the deceased was sitting on the left side road near Meenakshi Medical College Hospital, Ennathur situated at National High Ways Road running Vellore to Chennai, at that time, a tourist bus bearing registration No.AP-02-U-7575 proceeded towards Chennai hit the deceased on his back, thereby, he sustained fatal injuries and he succumbed to the injuries in the Meenakshi Medical College hospital. According to the claimants, the rash and negligent driving of the driver of the bus was the cause of accident and since the first respondent/ owner of the bus insured his vehicle with the second respondent/ insurance company, both of them are liable to pay compensation to them.

4. The insurance company/second respondent contested the claim petition by filing counter affidavit.

5. Before Tribunal, on the side of the claimants PW1 to PW3 were examined and Ex.P1 to Ex.P7 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.5,96,000/- under various heads, as extracted hereunder.

Sl No	Heads	Amount in Rs.
1	Loss of dependency 4500x2/3 x12	5,76,000
2	Loss of consortium	10,000
3	Loss of estate	5,000
4	Funeral expenses	5,000
	Total	5,96,000

Not satisfied with the quantum of compensation, the claimants have filed the present appeal seeking enhancement of compensation.

7. Heard the learned counsel appearing for the appellants/ claimants and also the counsel for the respondent/ insurance company. I have perused the materials on record.

8. The learned counsel appearing for the claimants/ appellants submitted that the deceased was working as a load man

and was earning a sum of Rs.300/- per day and the co-worker, who deposed as PW3 had also clearly stated that the deceased was working as a load man along with him in Tamil Ndu FCI Godown, Sha Nagar, Arakkonam, Vellore District and earned a sum of Rs.300/- per day, however, without considering the same, the Tribunal has erroneously fixed monthly income of the deceased at Rs.4,500/- per month. He further submitted that no amount was added towards future prospects and since there are four dependents, one fourth of the amount should be deducted from the income of the deceased, but the Tribunal has deducted one third amount towards personal income of the deceased. The Tribunal has awarded inadequate compensation under the conventional heads and hence, he prayed for enhancement of compensation.

9. The learned counsel appearing for the respondent/ insurance company submitted that after analysing the oral and documentary evidence, the Tribunal has awarded a just and reasonable compensation and hence, the same 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

According to the claimants, the deceased was working as a load man and was earning a sum of Rs.300/- per day. The PW3, who was a co-worker of the deceased deposed in his evidence that the deceased was a load man and he worked along with him and earned a sum of Rs.300/- per day. But, the Tribunal has fixed Rs.150/- per day as the income of the deceased. The accident occurred during the year 2008. Considering the fact that the deceased was working as a load man, this court fixed the income of the deceased at Rs.200/- per day and accordingly a sum of Rs.6,000/- is fixed as monthly income. As per the decision 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 deceased was aged 35 years on the date of accident and therefore, proper multiplier to be adopted in the instant case is ' 16 ', as per the decision rendered in Sarla Varma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. There are 4 dependents. Hence, it is appropriate to deduct ¼ of the income of the deceased towards his "Personal expenses". Thus, loss of dependency is calculated as 6000 + 2400 = 8400 - ¼ = 6300 x12x16 = 12,09,600/-. Accordingly a sum of Rs.12,09,600/ - is awarded towards " Loss of dependency ". Besides, a sum of Rs.15,000/- is awarded towards " Loss of consortium" to the first claimant and a sum of Rs.10,000/- each is awarded to the second, third and fourth claimants towards " Loss of love and affection". Further, a sum of Rs.15,000/- is awarded towards " Loss of Estate" and "Funeral Expenses". Accordingly, the revised compensation awarded under the various heads is extracted hereunder.

Sl.No	Heads	Compensation Awarded by the Tribunal	Compensation enhanced/ Awarded by this court
1	Loss of dependency	5,76,000	12,09,600
2	Loss of consortium	10,000	15,000
3	Loss of estate	5,000	15,000
4	Funeral expenses	5,000	15,000
5	Loss of love affection to claimants 2 to 4	-	30,000
6	Total	5,96,000	12,84,600

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 Rs.5,96,000/- to Rs.12,84,600/- No costs. The civil miscellaneous petition is closed.

(ii) The insurance company is directed to deposit the revised compensation of Rs.12,84,600/- 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 VI)

//True Copy//

Sub Assistant Registrar

mst

To

1. The Principal Distirct Judge, Motor Accident Claims Tribunal, Thiruvannamalai.

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

+1CC to Mr.R.Sreevidhya, Advocate, Sr.No.20697
+1CC to Mr.Anand and Suryas, Advocate, Sr.No.21201

CMA No.887 of 2014

PP (CO)
K.RK. (24.09.2021)