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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CMA No.2716 of 2021

1.Sumathi
2.Kalaiselvi ... Appellants/Petitioners

Vs

1.E.Velu

2.Reliance General Ins. Co. Ltd.,
No.6, 4th Floor, Haddows Road,
Chennai-600 006. ... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to enhance the amount awarded in M.C.O.P.No.3078 of 2017 dated 19.11.2020 on the file of Motor Accident Claims Tribunal, (Small Causes Court, Special Sub Court NO.1), Chennai as prayed for with interest and cost.

For Appellants : Mr.K.Varadha Kamaraj
For Respondents : Mrs.C.Bhuvana Sundari (for R2)
No Appearance (for R1)

J U D G M E N T

The claimants who sought for compensation for the death of one Velu, who died in a motor accident that occurred on 02.04.2017 are the appellants. The claimants sought for a compensation of Rs.40,00,000/- under various heads. They had contended that the deceased was working as a Welder in an Auto Garage, earning Rs.20,000/- per month. The claimants, who are the wife and daughter of the deceased Velu contended that they had lost the financial support and as such they have to be compensated. The Insurance Company resisted the claim contending that the accident did not occur in the manner suggested by the claimants. It was also stated that the driver of the lorry did not possess the valid licence. The amount of compensation claimed was termed as excessive.

2.Though an attempt was made before the Tribunal to prove the income of the deceased, the Tribunal disbelieved the evidence pointing out to the various contradictions in the

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evidence that was produced in support of the income of the deceased. However, the Tribunal adopted a notional income of Rs.10,000/- added 10% towards future prospects following the judgment of the Hon'ble Supreme Court in the case of National Insurance Company Limited Vs. Pranay Sethi and others reported in 2017 MACD 137. The Tribunal made a deduction of 1/3 following the judgment of the Hon'ble Supreme Court in Sarla Verma & Others Vs. Delhi Transport Corporation and Another reported in 2009 4 MLJ SC 997. Thus, the Tribunal arrived at the compensation for loss of dependency at Rs.9,68,000/-. The Tribunal also awarded the following amounts towards conventional damages:

Loss of Consortium	: Rs.40,000/-
Loss of Love and Affection	: Rs.25,000/-
Loss of Estate	: Rs.15,000/-
Transport charges	: Rs.5,000/-
Funeral Expenses	: Rs.15,000/-

Thus, the total award worked out Rs.10,68,000/-.

3.Mr.Varadhakamaraj, learned counsel appearing for the appellant would contend that the fixation of Rs.10,000/- as notional income per month for an accident that occurred in the year 2017 is very low. Even in the absence of any evidence, according to the learned counsel, the Tribunal should have fixed atleast Rs.15,000/- per month. He would point out that the Non-Muster Roll Employees of the PWD were paid around Rs.600/- per day. Even if that fixation is made and it is taken that if the deceased has worked for 25 days in a month, he would have earned about Rs.15,000/- per month. Therefore, according to the leaned counsel, the Tribunal must have adopted Rs.15,000/- as the monthly income.

4.Contending contra, Mrs.C.Bhuvanasundari, learned counsel appearing for the Insurance Company would submit that the claimants in fact attempted to produce false evidence before the Tribunal regarding the income of the deceased. She would also point out that the deceased was aged 51 years at the time of accident and he would not have earned anything more than Rs.10,000/- per month. I am unable to brush aside the contentions of the learned counsel for the appellant. The deceased was aged 51 years and there is nothing to suggest that he was weak or he could not do any work. Of course, the attempt made by the claimants to prove some income has failed, at the same time, the fixation of Rs.10,000/- per month by the Tribunal is also very low.

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5.Considering the overall circumstances and the fact that NMR employees engaged by the State's Public Works Department were paid more than Rs.600/- per day during the relevant period. I am of the opinion that Rs.13,000/- could be taken as a monthly income, giving an allowance for holidays. If the monthly notional income is fixed at Rs.13,000/- and 10% is added towards future prospects, the monthly income would be Rs.14,300/-. If 1/3 is deducted towards personal expenses of the deceased, the monthly income would be Rs.9,533/-. The total loss of dependency would be Rs.9533/- X 12 X 11 = Rs.12,58,356/-.

6.Adding the sum of Rs.1,00,000/- awarded towards conventional damages, the total compensation comes to Rs.13,58,356/- and the same is rounded of to Rs.13,50,000/-. The Tribunal has apportioned the compensation at Rs.6,68,000/- to the mother and Rs.4,00,000/- to the daughter.

7.In view of the enhancement, the mother would get Rs.8,00,000/- and the daughter would get the remaining Rs.5,50,000/- with proportionate interest. This Civil Miscellaneous Appeal is partly allowed. No costs. Costs awarded by the Tribunal shall be given to the mother. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-IX)

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Sub Assistant Registrar

vs

To
1.The Motor Accident Claims Tribunal,
(Small Causes Court, Special Sub Court NO.1),
Chennai.

2.The Section Officer,
VR Section, Madras High Court,
Chennai.

+1cc to Mr.S.Ravikumar, Advocate SR.No.67717

CMA No.2716 of 2021

AK II(CO)
GN(16/02/2022)

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