THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 21.04.2021

JUDGMENT DELIVERED ON : 30.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A.NO.3265 OF 2019

M.Mohammed Azharudin (deceased)

1. Mydeenkhan
2. Alipathu Beevi .. Appellants/Petitioners

..Vs..

1. M.Rafee

2. The New India Assurance Co. Ltd.,
   Motor Third Party Claims Office,
   No.45, Moore Street, Chennai-1.
   .. Respondents/Respondents

Civil Miscellaneous Appeal (CMA) filed under Section 173 of the Motor Vehicles Act against the order and decree dated 26.03.2019 in M.C.O.P.No.7744 of 2013 on the file of the Motor Accidents Claims Tribunal, Small Causes Court No.II, Chennai.

For appellants : Mr.R.Nalliyappan

For respondents : Mr.J.Chandran for R-2
R-1 set ex-parte before the Tribunal

JUDGMENT

R.SUBBIAH, J

Not being satisfied with the quantum of compensation awarded by the Tribunal, in and by Award dated 26.03.2019 made in M.C.O.P.No.7744 of 2013 (on the file of the Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai), the claimants have preferred this appeal seeking enhancement of the compensation.

2. The appellants/claimants are the father and mother of the deceased M.Mohammed Azharudin. It is their case that on 30.11.2013 at about 19 hours, when the deceased was riding motor-cycle bearing Registration No.TN-09-E-4433 on the Velacherry Main Road, opposite to Santhosapuram Police Check Post (from Medavakkam to Selaiyur Kamarajapuram direction), a lorry bearing Registration No.TN-01-F-3418, owned by the first respondent, came in a rash and negligent manner from behind and dashed against the motor-cycle of the deceased and in the said accident, the deceased sustained fatal injuries, thereby, lost his life. The deceased, at the time of accident, was studying First year B.E. (Civil Engineering) in Panimalar Engineering College, Chennai, and hence, the claimants have claimed a sum of Rs.83 lakhs as compensation.

3. The claim petition filed by the claimants was resisted by the second respondent/Insurance Company disputing the age of the deceased and also the licence of the driver of the lorry, manner of accident and stated that the deceased died due to his negligence. The Insurance Company also disputed the quantum of compensation sought for by the appellants/claimants.

4. In order to prove the claim, on the side of claimants, the father of the deceased was examined as P.W.1 and the eye-witness to the occurrence was examined as P.W.2 and Exs.P-1 to P-18 were marked on their side. On the side of Insurance Company, no oral or documentary evidence was adduced.

5. The Tribunal, after analysing the entire evidence available on record, came to the conclusion that the accident was due to the rash and negligent driving of the driver of the lorry and passed an Award for a sum of Rs.28,38,000/-. The break-up details of the amounts awarded by the Tribunal are as follows:

Sl.No.	Head under which the amount was awarded by the Tribunal	Amount (in Rs)
1	Loss of earning	22,68,000
2	Loss of estate	15,000
3	Funeral expenses	15,000
4	Medical expenses	5,00,000
5	Transportation	20,000
6	Attender charges	20,000
	Total	28,38,000

Thus, the Tribunal, in all, awarded a sum of Rs.28,38,000/- with 7.5% interest per annum from the date of claim petition till the date of deposit. Challenging the same, the present appeal has been filed by the claimants.

6. Now, the present appeal has been filed by the claimants contending that the Tribunal, while calculating compensation under the head "loss of income", had taken only a sum of Rs.15,000/- as the monthly income of the deceased. At the time of accident, the deceased was a first year B.E.student. Therefore, according to the claimants, on completion of the course, he would have substantially earned. In this regard, the learned counsel for the appellants/claimants submitted that, by relying on the judgment of this Court reported in 2018 (2) TN MAC 81 (DB) (Balamanohari Vs. Sri Venkateswara College of Engineering) and following the same, the Tribunal ought to have fixed the notional income of the deceased at Rs.20,000/- and calculated the compensation amount under the head "loss of income". That apart, the learned counsel appearing for the appellants/claimants submitted that the deceased was admitted in private hospital, where he took treatment for more than two weeks for the injuries sustained by him and inspite of the treatment, he died. The appellants/claimants had spent Rs.8,20,710/- towards medical expenses and filed medical bills to that effect. But the Tribunal had awarded only a sum of Rs.5 lakhs towards medical expenses, and therefore, the learned counsel for the appellants/claimants submitted that under the head "medical expenses", the sum of Rs.3,20,710/- may be additionally awarded.

7. Countering the above submissions, the learned counsel appearing for the second respondent/Insurance Company submitted that the deceased was only a student pursuing I year course in B.E. Hence, the Tribunal has fixed a sum of Rs.15,000/- as the monthly income of the deceased. The judgment relied on by the Tribunal relates to the deceased pursuing final year course and hence, the said judgment relied upon by the Tribunal, is not applicable to the case on hand while fixing the notional monthly income of the deceased. The learned counsel appearing for the second respondent/Insurance Company further submitted that Rs.5 lakhs awarded towards medical expenses also does not appear to be on the lower side. Absolutely, the amounts awarded by the Tribunal are just and proper and the same had been awarded by assigning well-considered reasons, and hence, according to the learned counsel appearing for the second respondent-Insurance Company, there is no reason to enhance the amount awarded by the Tribunal and thus, he prayed for dismissing the appeal.

8. Keeping in mind the submissions made on either side, we have carefully perused the entire materials available on record.

9. We find that the Tribunal, by fixing Rs.15,000/- as the notional monthly income of the deceased and by adding 40% towards future prospects and applying multiplier 18 and deducting 1/2 towards personal expenses, awarded a sum of Rs.22,68,000/- under the head "loss of earning". It is the submission of the learned counsel for the appellants/claimants that in a similar/identical case as relied on by the Tribunal in the judgment reported in 2018 (2) TN MAC 81 (DB) (cited supra), where also the deceased was a student, this Court fixed Rs.20,000/- as the notional monthly income and hence, the amount awarded by the Tribunal at Rs.15,000/- towards the notional monthly income may be enhanced.

10. Considering the facts and circumstances of the case, we are of the opinion that fixation of Rs.15,000/- as the monthly income of the deceased, shall be enhanced to Rs.18,000/- and to this amount, if 40% is added towards future prospects, the total income comes to Rs.25,200/-. The annual loss of income works out to Rs.3,02,400/-, to which, if one-half is deducted towards personal expenses, the amount comes to Rs1,51,200/-. To this amount, if the multiplier 18 is applied, the loss of earning comes to Rs.27,21,600/-.

11. So far as medical expenses is concerned, we find that the Tribunal has accepted the amount spent by the appellant/claimant at Rs.8,20,710/-, but the Tribunal had only awarded Rs.5 lakhs on the reasoning that the Insurance Company cannot be expected to reimburse the entire amount spent by them, as the act on the part of the hospital authorities can be equated only to loot the desperate family, and hence, the claimant has to work out his remedy against the hospital authorities by way of separate proceedings. We are of the opinion that such a reasoning cannot be accepted, when they produced the actual medical bills which are the tangible documents to show that they have spent such amounts towards medical expenses. Hence, the claimants are entitled to the actual medical expenses of Rs.8,20,710/- incurred by them, which are substantiated by medical bills.

12. Further, the claimants being the parents of the deceased, have not been granted filial compensation by the Tribunal. As per the decision of the Supreme Court reported in 2017 (16) SCC 680 (National Insurance Company Limited Vs. Pranay Sethi), the claimants are entitled for filial compensation for the death of their son. Accordingly, the claimants are entitled each to Rs.40,000/- (totally Rs.80,000/-) under the said head of filial compensation.

13. Except the modification of the above amount, the amounts awarded by the Tribunal under the other heads remain unaltered.

14. The amounts that are now being awarded by this Court in comparison with the amounts awarded by the Tribunal, are tabulated hereunder:

Sl. No.	Head under which the amounts are awarded	Amounts awarded by the Tribunal	Amounts awarded by this Court
1	Loss of earning	22,68,000	27,21,600
2	Loss of estate	15,000	15,000
3	Funeral expenses	15,000	15,000
4	Medical expenses	5,00,000	8,20,710
5	Transportation	20,000	20,000
6	Attender charges	20,000	20,000
7	Filial compensation	-	80,000
	Total	28,38,000	36,92,310

15. In the result, the appeal is allowed, enhancing the amount of compensation awarded by the Tribunal from Rs.28,38,000/- to Rs.36,92,310/-, which shall carry interest @ 7.5% per annum from the date of claim petition till the date of deposit. The second respondent-Insurance Company is directed to deposit the said amount of Rs.36,92,310/- with interest and costs, as awarded by the Tribunal, after adjusting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. The appellants/ claimants are directed to pay necessary Court fee, if any, on the enhanced compensation. On such deposit by the Insurance Company, the appellants/claimants are permitted to withdraw their respective shares with accrued/proportionate interest and costs, before the Tribunal in accordance with law. The proportion of allocation of shares as adopted by the Tribunal, between the claimants, shall stand confirmed. There shall be no order as to costs in the present appeal.

Sd/-
Assistant Registrar(I)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal,
   II Judge, Court of Small Causes,
   Chennai.

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

+1cc to Mr.J.Chandran, Advocate, S.R.No.26866

C.M.A.No.3265 of 2019

CA(CO)
CS/15/09/2021