IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.02.2021

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.634 of 2017

1.S.Zarina

2.S.Balamurugan

3.S.Nagarajan

4.S.Balaji ...Appellants

Vs

1.Jayaraman

2.ICICI Lombard Motor Insurance Company Limited,
1st Floor, Arinichant Plaza,
84/85, Wall Tak Road,
Chennai 600 003. ...Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 21.06.2013 made in M.A.C.T.O.P.No.4322 of 2011 on the file of the Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai.

For Appellant : M/s.M.Malar
For Respondents : Mr.K.K.Ramakrishnan for R2
R1-exparte

JUDGMENT

Heard the learned counsel for the appellant and the counsel for the second respondent Insurance Company.

2.The appeal is filed by the claimants for enhancement of compensation.

3.The brief facts of the case is that on 09.06.2011 at about 04.30p.m., when Senthattikalai, husband of the first claimant and the father of the claimants 2 to 4 was walking along the GST road from east to west near Urapakkam, Sankar Vidhyalaya School, a car bearing Registration No.TN-19-C-9730 dashed against Senthattikalai causing injuries. Senthattikalai was taken to the hospital but died on 12.06.2011 due to the accident injury. The claim petition for Rs.10,00,000/- was filed against the owner of the car bearing Registration No.TN 19 C 9730 and its insurer.

4. In the claim petition, it was contended that the deceased was working as supervisor in the Man Power Consultancy earning Rs.8,500/- per month. The claimants who were the dependents of the deceased have lost the breadwinner. At the time of accident, the deceased was 59 years old.

5.The claim petition was contested by the Insurance Company on the ground that the accident occurred due to the negligence of the deceased. The car driver had no valid license, permit and badge. Hence, the insurance company is not liable to pay any compensation. The owner of the car remained exparte.

6.Before the Tribunal, the claimants examined three witnesses and marked 8 exhibits. No witnesses examined on behalf of the respondent.

7.The Tribunal after considering the evidence awarded a sum of Rs.6,94,000/- as compensation with 7.5% interest from the date of petition 01.11.2011 till the date of realisation.

8.The appeal is filed seeking enhancement of compensation on the ground that the Tribunal has failed to consider the future prospects of the deceased, who died at the age of 59. The Tribunal erred in deducting 1/3 of the deceased income for his personal expenditure without taking note of the fact that there were four dependents on him and therefore, he would have spent only one fourth for his personal expenditure. The third point of attack on the award was regarding the fixation of multiplier. As per the schedule, for deceased between the age group of 55 to 60, the multiplier to be adopted is '9' but the Tribunal has erroneously applied multiplier '8'.

9. The Insurance Company contested that, the Tribunal has accepted the salary certificate produced by the claimant without proper corroboration. Since the notional income was fixed at a higher level, there is no need to interfere with the award of the Tribunal.

10.Before the Tribunal, the claimants have filed the F.I.R indicating that the accident occurred due to the negligence of the car driver. The salary certificate Ex.P8 is spoken through P.W.3, who is co-worker. There is no contra evidence to dispute the salary certificate Ex.P8 which indicates that the deceased was earning Rs.8,500 per month. In the said circumstances, this Court is of the view that in tune with the decision of the Supreme Court, 10% towards future prospect, 1/4th deduction for personal expenditure and multiplier '9' is the appropriate input for arriving at just compensation. Therefore, the loss of income and the compensation under other non conventional heads need to be modified. Accordingly, the award passed by the Tribunal is enhanced as below:

Compensation under Various Heads	***Award passed by this Court***
Loss of Earning Capacity (8,500+850)X9X3/4X12)	Rs.7,57,350/-
Funeral Expenses	Rs. 15,000/-
Loss of consortium to the first petitioner	Rs. 40,000/-
Loss of love and affection to the petitioners 2 to 4 (Rs.20,000/- each)	Rs. 60,000/-
Loss of estate	Rs. 15,000/-
Medical Expenses	Rs. 30,000/-
Total	**Rs.9,17.350/-**

11. Accordingly, the award is enhanced from Rs.6,94,000/- to **Rs.9,17,350/-** payable with interest at the rate of 7.5% p.a. from the date of

petition (01.11.2011) till the date of realisation. The period of 181 days

Dr.G.JAYACHANDRAN,J.

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delay in filing the appeal shall be excluded for computing interest. The said award amount shall be equally apportioned by the claimants 1 to 4 with proportionate interest. The award amount to be deposited by the Insurance Company within a period of twelve weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants are permitted to withdraw the same on appropriate application.

12. Accordingly, **the Civil Miscellaneous Appeal is partly allowed.** No order as to costs.

16.02.2021

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To
Motor Accidents Claims Tribunal
II Court of Small Causes,
Chennai.

CMA NO.634 OF 2017