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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.04.2021

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH
and
THE HONOURABLE TMT.JUSTICE S.KANNAMMAL

CMA.No.4814 of 2019

1.Saraswathy
2.Raguraman

... Appellants/Petitioners

Versus

1.Azeez Basha
2.United India Insurance Co. Ltd.,
No.134, Greams Road
IV Floor, Anna Salai
Chennai - 600 006.

... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree dated 31.07.2019 made in MACTOP No.6401 of 2016 on the file of the Motor Accidents Claims Tribunal (Special Sub Court No.1, Small Causes Court)), Chennai.

For Appellant	:	Mrs.A.Subadra for M/s.M.Malar
Respondent-1	:	Exparte
For Respondent-2	:	Mr.C.Ramesh Babu

JUDGMENT

(Judgment of the Court was delivered by S.KANNAMMAL, J)

Not being satisfied with the quantum of compensation awarded by the Tribunal in and by award dated 31.07.2019 passed in MACTOP No.6401 of 2016 on the file of Motor Accident Claims



Tribunal, (Special Sub Court-I), Small Causes Court, Chennai, the present appeal has been filed by the claimants seeking enhancement of compensation amount.

2. It is the case of the appellants/claimants before the Tribunal that on 15.09.2016 at about 7.30 p.m, while the deceased was buying foods at Mint Street, opposite to Government Press, Chennai, an auto came from south to north direction, in a rash and negligent manner, dashed against the deceased. Immediately after the accident, the deceased was admitted in Stanley Medical College Hospital, Chennai, and died on 22.09.2016. The claimants are the wife and son of the deceased, claiming compensation of Rs.50,00,000/- for the death of the deceased Mr.Balamuralikrishnan.

3. The second respondent herein/Insurance Company filed counter statement disputing the manner of accident, age and occupation of the deceased, Insurance Policy and prayed for dismissal of the claim petition.

4. In order to prove the claim, on the side of appellants, PW.1 to 3 were examined and Exs.P1 to P10 were marked; on the side of Insurance Company, RW.1 to RW.4 were examined and Exs.R1 to R9 were marked.

5. After considering the entire materials available on record, the Tribunal came to the conclusion that the accident had occurred due to the rash and negligent driving of the driver of the offending vehicle - auto insured with the second respondent Insurance Company and owned by the first respondent herein. The Tribunal had passed the award for a total sum of Rs.14,00,000/- payable by the second respondent Insurance Company at first instance with liberty to recover the same from the first respondent, since it was proved that the driver of the auto did not possess valid driving licence at the time of accident. Challenging the same, the present appeal has been filed by the claimants for enhancement of compensation amount.

6. The learned counsel for the appellants/claimants submitted that the Tribunal without considering the age, income and occupation of the deceased, passed an award of lesser compensation for Rs.14,00,000/- as against the claim amount of Rs.50,00,000/-. It is further submitted that the Tribunal has failed to consider Ex.P7, the salary certificate of the deceased. It is submitted that the deceased was working as an accountant at Sri Kakumani Authikesavalu Chetty's Charities and was earning Rs.2,06,000/- per annum, but the Tribunal has erroneously fixed the income of the deceased at Rs.10,000/- per month. The learned counsel for the appellants would further submit that the compensation awarded by the Tribunal under the



7. Per contra, the learned counsel for the Insurance Company made his submissions supporting the award passed by the Tribunal. Pertaining to the salary certificate Ex.P7, the Tribunal had observed that in Ex.P7 only the annual income is mentioned and the date of appointment, years of service and the deductions made in the salary are not mentioned. The Tribunal has also observed that no substantial evidence, such as bank passbook entry for the credit of salary amount or cash voucher slips signed by the deceased were produced to prove the income of the deceased. Hence the Tribunal has taken a notional income of Rs.10,000/- as monthly income of the deceased.

9. Though no witness was examined on the side of claimants to prove the income of the deceased, considering the fact that the accident is of the year 2016, we are of the view that an amount of Rs.15,000/- may be fixed as monthly income of the deceased for calculating the loss of income to the dependents. Taking Rs.15,000/- as monthly income, 25% i.e., Rs.3,750/- is to be added towards future prospects that will come to Rs.18,750/-. From that, $\frac{1}{3}$ rd amount i.e., Rs.6,250/- ($\text{Rs.18,750} \times \frac{1}{3}$) is to be deducted towards personal expenses of the deceased. Therefore, the monthly contribution by the deceased to his family would be Rs.12,500/- and the annual contribution would be $\text{Rs.12,500/-} \times 12 = \text{Rs.1,50,000/-}$. By applying the correct multiplier 13, the loss of income to the dependents comes to Rs.19,50,000/- ($\text{Rs.1,50,000/-} \times 12$).

11. Apart from that, the Tribunal has awarded only Rs.25,000/- for loss of love and affection and an amount of Rs.15,000/- to be enhanced under the head of loss of love and affection. Further, for the transport charges, a reasonable amount of Rs.15,000/- to be fixed as against Rs.5,000/- awarded by the Tribunal.



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12. Accordingly, the compensation awarded by the Tribunal would stand modified in different heads as under :-

Heads	Amount awarded by the Tribunal (Rs.)	Amount modified by this Court (Rs.)
Loss of Dependency	13,00,000	19,50,000
Loss of Consortium	40,000	40,000
Loss of Love and Affection	25,000	40,000
Loss of estate	15,000	15,000
Transport charges	5,000	15,000
Funeral expenses	15,000	15,000
Total	14,00,000	20,75,000

13. In the result, this Civil Miscellaneous Appeal is partly allowed, enhancing the amount of compensation awarded by the Tribunal from Rs.14,00,000/- to Rs.20,75,000/- (Rupees Twenty Lakhs and Seventy Five Thousand only) with interest at 7.5% per annum from the date of claim petition till the date of realization, excluding the default period, if any. The entire award amount is payable by the second respondent/Insurance Company at first instance with liberty to recover the same from the first respondent without filing any petition. Out of the total compensation of Rs.20,75,000/-, the first claimant/wife of the deceased is entitled to a sum of Rs.15,00,000/- (Rupees fifteen lakhs only) together with proportionate interest and costs awarded in MACTOP and the second claimant/son of the deceased is entitled to a sum of Rs.5,75,000/- (Rupees five lakhs and seventy five thousand only) with proportionate interest. No costs in this CMA.

14. The second respondent/Insurance Company is directed to deposit the entire award amount together with interest at 7.5% p.a. as assessed by this Court, less the amount, if any, already deposited to the credit of MACTOP No.6401 of 2016 on the file of the Motor Accidents Claims Tribunal (Special Sub Court No.1, Small Causes Court), Chennai, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the appellants, through RTGS within a period of two weeks thereafter. The requisite



Court fee, if any, has to be paid by the appellants before receiving the copy of this Judgment.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Special Subordinate Judge No.1
Motor Accidents Claims Tribunal
(Small Causes Court), Chennai.

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

+1cc to M/s.Malar, Advocate (SR No.25736)

CMA.No.4814 of 2019

MG (CO)
PR (27/07/2021)