BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.03.2021

CORAM:
THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA
AND
THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A(MD)No.1078 of 2016

1.Indumathi Bhaskaran
2.Anusha
3.Brigadish
4.Rajalakshmi ... Appellants/Claimants

(A-3 is declared as major & guardianship of his mother is discharged vide order dated 01.02.2021 made in C.M.P(MD)No.2955/2020)

Vs.

1.Rajendran

2.Bharti AXA General Insurance Company Limited,
Having its Office at 1st Floor,
Ferns Icon,
Survey No.28, Doddanakundi Village,
K.R.Puram,
Hobli,
Bangalore – 560 037. ... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 06.06.2016 made in M.C.O.P.No.1279 of 2012 on the file of the Motor Accident Claims Tribunal, Special District Court, Thanjavur.

For Appellants : Mr.G.Karnan

For R – 1 : Dismissed

For R – 2 : Mr.G.Maruthiah

JUDGMENT

(Judgment of the Court was delivered by PUSHPA SATHYANARAYANA,J.)

Seeking enhancement of compensation, the appellants/claimants have preferred this Civil Miscellaneous Appeal against the award, dated 06.06.2016 passed in M.C.O.P.No.1279 of 2012, on the file of the Motor Accident Claims Tribunal, Special District Court, Thanjavur.

2.In the said M.C.O.P, the appellants/claimants 1 to 4 are the wife, children and mother of the deceased-Bhaskaran. The Tribunal had awarded a sum of Rs.1,07,80,804/- on various heads. The said award is now challenged in the present Civil Miscellaneous Appeal only on the quantum.

3.The brief facts relevant for the consideration of the above case is that on 06.07.2012, when the deceased-Bhaskaran was proceeding in a two-wheeler bearing Registration No.TN-46-C-2563 from Ariyalur Reddypalayam Ultra Tech Cement Company to Thanjavur, the driver of the TATA lorry bearing Registration No.TN-22-BS-5116 drove the vehicle in a rash and negligent manner, dashed against the two-wheeler. Due to the said impact, the deceased sustained severe injuries and died on the spot. Hence the appellants/claimants, as legal heirs of the deceased, has filed this claim petition claiming a compensation of Rs.2,50,00,000/-.

4.Resisting the claim petition, the second respondent/Insurance Company has filed a counter affidavit contending that the accident had occurred only due to the reckless act of the deceased and the quantum of compensation as claimed by the claimants is highly excessive and without any basis.

5.Before the Tribunal, on the side of the claimants, P.W.1 to P.W.3 were examined and Exs.P1 to Ex.P10 were marked. On the side of the respondents, R.W.1 and R.W.2 were examined and Ex.R1 to Ex.R3 were also marked.

6.The Tribunal, after considering the oral and documentary evidence, held that the accident had occurred only due to the rash and negligent driving of the driver of the first respondent and that the deceased sustained injuries and due to the impact, he died. The Tribunal further held that the second respondent/Insurance Company is liable to pay compensation to the claimants and had awarded a total compensation of Rs.1,07,80,804/- under various heads.

7.Heard the learned counsel appearing on either side and perused the materials available on record.

8.The learned counsel appearing for the appellants/claimants would submit that the Tribunal had erroneously awarded the compensation, without considering the facts of the case as well as the available evidence and documents in a proper manner. The learned counsel further submitted that the future prospects of the deceased was not added by the Tribunal.

9.The learned counsel appearing for the second respondent/Insurance Company would submit that the Tribunal had not taken into account the fact that no income tax return is filed on the side of the claimants.

10.Heard the learned counsel appearing on either side and perused the materials available on record.

11.On a perusal of the entire materials available on record, it is seen that the deceased was working as a Senior Manager in Quality Control Department and earning a sum of Rs.17,98,408/- per annum. It is also evident from Ex.P.10-salary certificate that the deceased was earning a sum of Rs.17,98,408/- per annum and the Tribunal had correctly fixed the yearly income of the deceased as Rs.17,98,408/-. Since the Tribunal had not added any future prospects to the deceased, we are inclined to add 15% towards future prospects and accordingly, if 15% is added towards future prospectus, the same would be arrived at Rs.20,68,169/- (Rs.17,98,408/- + Rs.2,69,761/-). After deducting $1/4^{th}$ amount towards personal expenses, the same would be Rs.15,51,127/- (Rs.20,68,169 - Rs.5,17,042/-) and if 30% is deducted towards income tax, the compensation per annum would be Rs.10,85,789/- (Rs.15,51,127 - Rs.4,65,338). If '11' multiplier is applied, the annual income of the deceased would be Rs.1,19,43,679/- (Rs.10,85,789 X '11').

12.The amounts awarded by the Tribunal under the other conventional heads, viz., a sum of Rs.25,000/- towards funeral expenses and a sum of Rs.10,000/- towards transport charges are very reasonable and they are confirmed.

13. A sum of Rs.10,000/- awarded by the Tribunal towards loss of estate is increased to Rs.15,000/- towards loss of estate.

14.As far as the loss of love and affection is concerned, the Tribunal had awarded a sum of Rs.1,00,000/- towards loss of consortium to the first claimant; a sum of Rs.1,00,000/- towards loss of love and affection to the second claimant; a sum of Rs.1,00,000/- towards loss of love and affection to the third claimant and a sum of Rs.50,000/- towards loss of love and affection to the fourth claimant, which needs interference, as per the decision in ***National Insurance Company Limited Vs. Pranay Sethi and Others*** reported in ***2017(2) TN MAC 609(SC),*** each claimant is entitled to Rs.40,000/- towards loss of love and affection and the same would arrive at Rs.1,60,000/- (Rs.40,000/- X 4). Accordingly, the total compensation is arrived at a sum of Rs.1,21,53,679/-.

15.As regards the interest awarded by the Tribunal at the rate of 9% per annum, normally, the Court used to award interest at the rate of 7.5% per annum due to economical changes in the Country and therefore, the interest awarded by the Tribunal is required to be reduced to 7.5% per annum from 9% per annum and it is reduced accordingly.

16.Accordingly, the Award of the Tribunal is modified as follows:-

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of income	1,03,85,804/-	1,19,43,679/-	enhanced
2.	Funeral expenses	25,000/-	25,000/-	confirmed
3.	For loss of Estate	10,000/-	15,000/-	enhanced
4.	Transport charges	10,000/-	10,000/-	Confirmed
5.	Loss of consortium to the first claimant	1,00,000/-	40,000/-	Reduced
6.	For loss of love and affection to the second claimant	1,00,000/-	40,000/-	Reduced
7.	For loss of love, affection, care and guidance to the third claimant	1,00,000/-	40,000/-	Reduced
8.	For loss of love and affection to the fourth claimant	50,000/-	40,000/-	reduced
	Total	1,07,80,804/-	1,21,53,679/-	Enhanced by Rs.13,72,875/-

17.In the result, the Civil Miscellaneous Appeal is allowed in part as follows:-

(i) The Award of the Tribunal is enhanced to Rs.1,21,53,679/- from 1,07,80,804/-.

(ii) The interest granted by the Tribunal at 9% per annum is reduced to 7.5% per annum.

(iii) The Award amount is apportioned as per the ratio of apportionment made by the Tribunal.

(iv) The second respondent-Insurance Company is directed to deposit the enhanced award amount together with accrued interest and costs to the credit of claim petition, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this order.

(v) The appellants 1 to 4/claimants 1 to 4 are permitted to withdraw their share in the award amount with proportionate accrued interest and costs.

No costs.

Sd/-
Assistant Registrar (CS-II)

// True Copy //

/ /2021
Sub Assistant Registrar(CS)

PS

Note :
In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The Special District Judge,
Motor Accident Claims Tribunal,
Thanjavur.

2.The Section Officer,
V.R Section (Records),
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.G.KARNAN, Advocate (SR-12636[F] dated 22/03/2021)

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KM(20.05.2021) 6P 5C