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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.03.2022

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
AND
THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

C.M.A.NO.1714 OF 2021
AND
CMP.NO.9091 OF 2021

The Commandant,
TSP,
VBN, Avadi,
Chennai

...Appellant/Respondent

vs.

1. Bhuvaneswari
2. K.Raghul Raj
3. K.Kaviraj
4. Kamalammal

... Respondents/Petitioners

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 against the judgment and decree dated 03.03.2020 passed by the Motor Accident Claims Tribunal (Principal Subordinate Judge), Chengalpattu in MCOP.No.197 of 2011.

For Appellant : Mr.Edwin Prabhakar
Special Government Pleader (CS)

For Respondents : Notice served - No appearance

JUDGMENT

[Judgment of the Court was delivered by K.KALYANASUNDARAM, J]

This appeal is directed against the award and decree passed by the Motor Accident Claims Tribunal (Principal Subordinate Judge), Chengalpattu in MCOP.No.197 of 2011.



2. The claim petition was filed by the wife, 2 children and mother of the deceased Krishnan. It is their case that the deceased was waiting opposite to Dr.Kesavan Hospital at GST Road near Sriperumbudur Junction on the extreme left side on 05.09.2011 at 06.30 hours. At that time, a Bus bearing Registration No.TN-20-G-0321, which was proceeding from Chennai to Chengalpattu, driven by its driver in a rash and negligent manner, hit against the deceased. In the accident, the deceased sustained multiple grievous injuries all over the body and died. A criminal case was registered against the driver of the Bus in Cr.No.815 of 2011 before the D-6 Maraimalai Nagar Police Station for the offences under Sections 279 and 304A IPC.

3. The claimants have further stated that the deceased died at the age of 39 years and he was earning Rs.15,000/- per month by working as a Security Guard in ISS Security Bureau and Field Officer in PACL INDIA Ltd. Since the accident had occurred due to the negligence of the driver of the Bus, the owner is liable to pay compensation of Rs.46,35,000/-, which was restricted to Rs.15,00,000/-.

4. In the counter, the appellant has stated that the accident had not occurred due to the rash and negligent driving of the driver of the Bus, but in fact, the deceased was driving his motorcycle bearing Registration No.TN-19-D-8814 and suddenly, attempted to cross the road and thereby, he invited the accident. Hence, the claimants are not entitled to get any compensation.

5. The parties have adduced oral and documentary evidence. PW2 is the de-facto complainant in the criminal case and he had narrated the manner of accident in his evidence. Ex.P1 a copy of FIR and Ex.P2 a copy of the charge sheet were relied upon to prove that the driver of the Bus was responsible for the accident. However, the appellant places reliance on Ex.R1 judgment in STC No.52 of 2015, in support of their case and submitted that the driver was acquitted by the Criminal Court. Though inconsistent statements were made with regard to the driver of the offending vehicle at the time of the accident, but eventually, the Tribunal held that the driver of the Bus was negligent. In the present appeal, there is no dispute with regard to the findings on negligence, but it has been filed only questioning the quantum of compensation awarded by the Tribunal.

6. The learned Special Government Pleader appearing for the appellant Mr.Edwin Prabhakar urged that without any material, the Tribunal has wrongly fixed income and also added 50% towards future prospects contrary to the decision of the Apex Court.



8. In the case on hand, in the claim petition it has been clearly stated that the deceased Krishnan was working as Security Guard and Field Officer in PACL INDIA Ltd. and receiving a monthly salary of Rs.15,000/-. In support of their case, Ex.P9 and Ex.P10, PACL Identity Card and PAN Card of the deceased, were filed. Since the claimants failed to examine the employer of the deceased and salary certificate was also not filed, the Tribunal fixed notional monthly income as Rs.8,000/- and added 50% for future prospects. However, the oral evidence of PW1 would establish that the deceased was working permanently in a Private Company, hence, the income of the deceased can be safely fixed at Rs.9,000/- per month to meet the ends of justice. As rightly pointed out by the learned Special Government Pleader appearing for the appellant, the deceased would be entitled for 40% addition towards future prospects, and thus, the total income is arrived as Rs.12,600/- [9,000 + 3,600], from which, 1/4 is deducted for his personal expenses, therefore, the contribution to the family comes to Rs.9,450/- [12,600 - 3,150]. Considering the fact that the deceased died at the age of 39 years, the proper multiplier 15 is applied and the Pecuniary Loss is arrived at Rs.17,01,000/- [9,450 x 15 x 12].

S.No.	Heads under which amount is awarded by the Tribunal	Amount awarded by the Tribunal in Rs.	Amount awarded by the Tribunal in Rs.
1.	Pecuniary Loss	16,30,000	17,01,000
2.	Non Pecuniary Loss	3,50,000	-
3.	Loss of Estate	-	15,000
4.	Funeral Expenses	-	15,000
5.	Loss of Consortium	-	40,000
6.	Loss of Filial Consortium	-	40,000



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S.No.	Heads under which amount is awarded by the Tribunal	Amount awarded by the Tribunal in Rs.	Amount awarded by the Tribunal in Rs.
7.	Loss of Parental Consortium	-	80,000
	Total	19,80,000	18,91,000

10. The sum of Rs.19,80,000/- awarded by the Tribunal is reduced to Rs.18,91,000/-. Out of the award amount, claimants 1 to 3 are entitled to Rs.5,00,000/- each and the fourth claimant is entitled to Rs.3,91,000/-. The appellant is directed to deposit the above modified award amount with proportionate interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants are permitted to withdraw the award amount as apportioned above, less the amount already withdrawn, if any, together with proportionate interest and costs.

11. With the above directions, the appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

pvs

To

The Principal Subordinate Judge,
Chengalpattu.

+1cc to the Special Government Pleader(CS), S.R.No.13921

C.M.A.No.1714 of 2021

GSM(CO)
RLP(01/06/2022)