IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.03.2022

CORAM

THE HON'BLE MRS.JUSTICE J.NISHA BANU

C.M.A.No.1753 of 2009

1.T.Raghava Simhan

2.R.Kowshik (Minor)

3.R.Vijayaraghavan(Minor)
Petitioners 2 & 3 are minors rep.by their father and next friend.

... Appellants/Petitioners

Vs.

1.V.Shivaji

2.The Oriental Ins.Co., Ltd.
Motor III Party Claims Office,
Jawaharlal Nehru Salai,
Oil Mill Stop,
State Bank of India upstairs,
Thiruvallur,
Thiruvallur District. ... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 12.02.2007 made in M.C.O.P.No.377 of 2004, on the file of the Motor Accidents Claims Tribunal, (Additional District and Sessions Judge) Fast Track Court III, Poonamallee.

For Appellants	:	Mrs.Maithri Mahalingam for Mr.J.Mahalingam
For 2nd Respondent	:	M/s.M.J.Vijayaraghavan

J U D G M E N T

Aggrieved by the judgment and decree dated 12.02.2007 passed by the Motor Accidents Claims Tribunal (Additional District & Sessions Judge) Fast Track Court III, Poonamallee in M.C.O.P.No.377 of 2004, the claimants have come up with this Civil Miscellaneous Appeal, seeking enhancement of compensation.

2. The appellants/claimants are the husband and the sons of the deceased Bharathi, who died in a motor accident. On 15.06.2004, at about 11.00 a.m. while the deceased was

travelling as pillion rider in a TVS motorcycle bearing Registration No.TN-22-M-6274, a lorry bearing Registration No.TN-01-A-9099, belonging to the first respondent and insured with the second respondent, driven by its driver allegedly, came in a rash and negligent manner from the same direction and dashed against the motorcycle from the back side and caused the fatal accident. Therefore, the claimants claimed a sum of Rs.10,00,000/- as compensation.

3. Before the Tribunal, on the side of the Claimants, P.W.1 and P.W.2 were examined and exhibits Ex.P1 to P11 were marked. On the side of the Respondents, no witness was examined and no document was marked.

4. The second respondent - Insurance Company has filed a counter affidavit in which it was stated that the appellants have to prove the accident, age, occupation, income and their relationship with the deceased. The rider of the motorcycle without having a valid driving licence to ride the motor cycle, drove the same in the Velacherry Road, near Pallikaranai and came behind the first respondent's lorry and applied sudden break due to pit in the road, as a result of which, the driver the fell down due to imbalance and sustained injury.

5. After considering the pleadings, oral and documentary evidence on record, the Tribunal has awarded a sum of Rs.4,97,000/- under the following heads:-

Loss of income	Rs. 4,32,000/-
Loss of love and affection to the claimants 1 to 3(each Rs.20,000/-)	Rs. 60,000/-
Funeral Expenses	Rs. 5,000/-
Total	Rs. 4,97,000/-

6. Not being satisfied with the quantum of compensation awarded by the Tribunal, the appellants have come out with the present appeal seeking enhancement of compensation.

7. The learned counsel appearing for the appellants submitted that the deceased was working as an LIC agent and was earning a sum of Rs.8,333/- p.m. The Tribunal ought to have fixed the monthly income of the deceased at Rs.8,333/- For every policy, premium agent would get commission and till the maturity of the policy, they would get commission. As per the Judgment of the Hon'ble Apex Court reported in Ramrao Lala Borse and another vs. New India Assurance Co., Ltd., and another, 2018 ACJ 973 , the Supreme Court has held that the deceased, who is a bachelor aged 29 and working as an Assistant

Teacher on contract basis for a period of five years in a school earning monthly salary of Rs.2,800/-, wherein the claimants are aged father and mother. In that case, the Tribunal has observed that had the deceased been alive and continued in service he would have been regularised and would have been entitled to the benefits of 6^{th} Pay Commission and therefore, assessed the income at Rs.40,000/- p.m.

8. In pursuance to the above view point emphasised in the Judgment relied upon by the appellants. It is further submitted that the Tribunal ought to have at least fixed the income of the deceased as Rs.6,500/- per month instead of Rs.3,000/-. In this connection, the learned counsel for the appellants also relied on the decision of the Hon'ble Supreme Court in Syed Sadiq Vs. United India Insurance Co.Ltd., reported in (2014) 2 SCC 735. Further, according to the learned counsel for the appellants, the Tribunal ought to have awarded the amount towards future prospects.

9. He also referred to the decision of the Hon'ble Supreme Court reported in Mohammed Siddique and another vs. National Insurance Co. Ltd. and others reported in 2020 ACJ 751, wherein the Hon'ble Supreme Court has held that so long as the oral testimony of the witness remained unshaken and there were also no contradictions in his testimony, the evidence has to be accepted and acted upon and therefore, prays for allowing the present appeal.

10. Per contra, the learned counsel for the 2^{nd} respondent-Insurance Company submitted that the amounts awarded by the Tribunal under different heads are not meagre and the impugned order is a well reasoned one and requires no interference and therefore, this civil miscellaneous appeal is liable to be dismissed.

11. I have considered the arguments advanced by the learned counsel for both sides and also perused the evidence available on record.

12. The Tribunal has considered a meagre amount of Rs.3,000/- as monthly income of the deceased Bharathi by placing reliance on the decision of the Hon'ble Supreme Court in Syed Sadiq's case, referred to supra. Considering the fact that the accident took place in the year 2004, I am of the view that the notional income of the deceased Bharathi can be considered as Rs.4,500/- per month for the purpose of awarding compensation to award just compensation to the appellants/claimants. Hence, this Court has taken into consideration the monthly income of the deceased as Rs.4,500/- and after deducting 1/3 of the amount towards personal expenses of the deceased, then she would be

contributing to her family a sum of Rs.3,000/-. Considering the age of the deceased as 30 years, at the time of accident, as per the Apex Court Judgment reported in 2009(2) TNMAC 1 (SC) in Smt.Sarla Varma Vs. Delhi Transport Corporation and another, the correct multiplier to be applied is multiplier 17. Further, it is seen that the Tribunal has not fixed future prospects of the deceased. This Court is inclined to consider the future prospects of the deceased as 40% of the monthly income as per the decision of the Hon'ble Supreme Court in National Insurance Company Limited Vs. Pranay Sethi and Others reported in (2017) 16 SCC 680. With regard to the age of the deceased which is 30, the Tribunal has also adopted the wrong multiplier of 18 instead of 17. Therefore, the amount awarded towards loss of dependency is to be modified. The Tribunal has awarded a sum of Rs.20,000/- each towards loss of love and affection to the appellants 1 to 3 is hereby confirmed. Under the head " funeral expenses" this Court enhances from 5,000 to 10,000/-. Hence, the total compensation is arrived as follows:

Heads and calculation (Rs.)		Amount awarded by this Court (Rs.)	Enhanced/ Confirmed/ Granted
Loss of earning capacity i) Income per month ii) Add 40% future prospects (4,500 x 40%) Total iii) Less : Personal expenses at 1/3 (Rs.6,300 /- 1/3) iv) Annual Income of the deceased (Rs.4,200 x 12) v) Multiplier 17 (50,400 x 17)	4,500/- 1,800/- -------- 6,300/- -------- 4,200/- 50,400/- 8,56,800/-	8,56,800/-	Enhanced
Loss of love and affection to the appellants		60,000/-	Confirmed
Funeral expenses	5,000/-	10,000/-	Enhanced
Total		Rs.9,26,800/-	

13. Accordingly, this civil miscellaneous Appeal is partly allowed and the compensation amount awarded by the Tribunal is enhanced from Rs.4,97,000/- to Rs.9,26,800/- together with interest at the rate of 7.5% per annum from the date of the claim petition till the date of such deposit. The appellant is directed to pay necessary Court fee, if any, on the enhanced compensation. Therefore, the 2nd respondent-Insurance Company is directed to deposit the enhanced award amount, now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants are permitted to withdraw the respective shares with proportionate interest and costs, less the amount if any, already withdrawn, by filing suitable applications before the Tribunal. No costs.

Sd/-
Assistant Registrar(CS-VIII)

//True copy//

Sub Assistant Registrar

kkd

To

The Motor Accidents Claims Tribunal
(Additional District & Sessions Judge)
Fast Track Court III, Poonamallee.

Copy To

The Section Officer,
VR Section,
High Court,
Madras.

C.M.A.No.1753 of 2009

CA(CO)
GMY(13/07/2022)