IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2022

CORAM:

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

C.M.A.NO.474 OF 2021

1. Ruth Rabakkal

2. Minor Lovita
(Minor rep. by her next friend/
guardian Mother)

... Appellants/Petitioners

Vs.

1. J.J.Engineering
rep. by its Proprietor,
146, 1A & 11, Main Road Street,
Thodukkadu Village and Post,
Sriperumpudur,
Tamil Nadu.

2. Haridoss

3. New India Assurance Company,
Rep. by its Branch Manager,
Pondicherry - 1.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988 against the Judgment and Decree dated 24.03.2020 passed in MACTOP No.195 of 2018 on the file of the Motor Accident Claims Tribunal, (Principal District Court) Puducherry.

For Appellants : Mr.T.Sezhian

For Respondents : Mr.J.Chandran for R3
No appearance for R1 and R2

JUDGMENT

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

This appeal has been filed by the claimants in MACTOP No.195 of 2018 on the file of the Motor Accident Claims Tribunal, (Principal District Court) Puducherry, seeking enhancement of compensation.

2.The husband of the first claimant and the father of the second claimant, namely, Muthusaravan died in the road accident occurred on 14.11.2016. According to the claimants, at the relevant point of time, the deceased was riding his motorcycle bearing Reg.No.PY-01-BX-1381. The accident happened due to the negligence of the driver of the lorry bearing Reg.No.TN-20-CJ-4198. The Tribunal on appreciation of evidence adduced by the parties, held that the driver of the lorry was responsible for the accident.

3.Though the appellants/claimants had produced Ex.P.10-Income Tax Returns for the year 2013-14, 2014-15 and 2015-16 to prove the income of the deceased, the Tribunal rejected the same on the sole ground that no acknowledgment was produced by the claimants to prove that they have filed income tax returns. The Tribunal has taken the monthly income as Rs.7,000/-. After adding 10% towards future prospects and after deducting 1/3rd towards personal expenses and by applying multiplier '13', the loss of dependency is assessed as Rs.8,00,800/- (7000+700(10%) =7700x12x13x2/3). The Tribunal has also awarded Rs.40,000/- towards consortium; Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses. In total, the Tribunal has awarded Rs.8,70,800/- which is rounded off to Rs.8,75,000/-.

4.The learned counsel appearing for the appellants/claimants Mrs.R.Meenal would submit that the Tribunal have stated that the appellants had produced the proof for filing of the the income tax return, hence, the reason assigned by the Tribunal cannot be countenanced. In the typed set, the appellants have annexed the counter files to establish that the deceased has filed income tax return for the years 2013-14 and 2014-15.

5.The learned counsel appearing for the third respondent/Insurance Company Mr.J.Chandran would argue that the deceased was running Tea Shop in two places and there is no evidence to show that the legal heirs have closed the business on account of the death of the deceased. It is next submitted that the claimants can employee a person to run the business, hence, the claimants have not suffered any loss of income.

6.We are unable to agree with the submission of the learned counsel appearing for the third respondent/Insurance Company for the reason that P.W.1 in her evidence, has categorically stated that after the death of her husband, the family is not get any income and they are suffering. That apart, there is no cross examination with regard to the income of the claimants after the death of P.W.1's husband.

7.A perusal of Ex.P.10-Copy of the Income Tax Return shows that for the year 2013-14 profit of the deceased was Rs.2,09,760/- and for the year 2014-15 Rs.2,51,720/-. Therefore, the average comes to Rs.2,25,000/-. Hence, we fix the annual notional income as Rs.2,25,000/-.

8.At the time of accident, the deceased was aged about 49 years. As per the decision of the Hon'ble Supreme Court in the case of National Insurance Company Ltd., vs. Pranay Sethi and others reported in 2017 (2) TN MAC 609 (SC), the claimants are entitled to 25% addition towards future prospects and as per the decision of Sarala Verma and others vs. Delhi Transport Corporation and another reported in 2009 TN MAC 1, proper multiplier would be '13'. Since the dependents are two in number, 1/3rd of the income has to be deducted towards personal expenses. Hence, after adding 25% towards future prospects and after deducting 1/3rd towards personal and living expenses and by applying multiplier '13', the loss of dependency is assessed as Rs.24,37,500/-(2,25,000+56250=281250x13x2/3). As per the decision of the Hon'ble Apex Court in the case of Magma General Insurance Co. Ltd., vs. Nanu Ram and others reported in 2018(1) TN MAC 452 (SC), each of the claimants are entitled to Rs.40,000/- towards consortium and Filial consortium, which comes to Rs.80,000/-. Hence, the amount of Rs.40,000/- awarded towards consortium is enhanced to Rs.80,000/-. The amount of Rs.15,000/- awarded towards funeral expenses and Rs.15,000/- towards loss of estate are confirmed. The rate of interest fixed by the Tribunal as 7.5% per annum is unaltered.

9.For the foregoing reasons, the compensation awarded by the Tribunal to the claimants is re-quantified as follows:-

Heads	Amount awarded by the Tribunal	Re-quantified Amount by this Court	Status
Loss of dependency	8,00,800/-	24,37,500/-	enhanced
Loss of Consortium & Filial Consortium	40,000/-	80,000/-	enhanced

Heads	Amount awarded by the Tribunal	Re-quantified Amount by this Court	Status
Funeral Expenses	15,000/-	15,000/-	confirmed
Loss of Estate	15,000/-	15,000/-	confirmed
Total	8,70,800/-	25,47,500/-	enhanced
Rounded off	8,75,000/-	25,48,000/-	

10. In such view of the matter, this Civil Miscellaneous Appeal is partly allowed. The award amount of Rs.8,75,000/- is enhanced to Rs.25,48,000/-. Out of which, the first claimant/wife of the deceased is entitled to Rs.15,48,000/- and the second claimant/daughter of the deceased is entitled to Rs.10,00,000/-. The third respondent/Insurance Company is directed to deposit the modified award with accrued 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 major claimant is permitted to withdraw her share after filing a memo, along with a copy of this order, less the amount if already withdrawn. The Tribunal is directed to deposit the share of the minor claimant in any one of the Nationalised Bank till she attains majority and the first claimant being mother and natural guardian is permitted to withdraw the interest once in six months directly from the Bank. The minor claimant/Lovita on attaining majority is permitted to withdraw her share. No costs.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

skn

To
The Motor Accident Claims Tribunal,
(Principal District Court) Puducherry.

+1cc to M/s.R.Meenal, Advocate, S.R.No.27057
+1cc to Mr.J.Chandran, Advocate, S.R.No.27247

C.M.A.No.474 of 2021

JPL(CO)
RLP(03/06/2022)