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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.12.2021

PRONOUNCED ON: 14.03.2022

CORAM:

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A.No.1178 of 2018

Malliga

...Appellant/Petitioner

Vs.

1. M/s. PPG Enterprises Firm,
No.5, Teena Towers, First Floor,
Shop No.3, Ramanujar Nagar,
P.H.Road, Sriperumbudhur.

[R1 remained Ex-parte before the Tribunal]

2. Reliance General Insurance Company Limited,
Flat No.2054, II Floor,
2nd Avenue,
Senthil Nursing Home,
Anna Nagar,
Chennai - 600 040.

...Respondents/Respondents

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 10.11.2017 made in M.A.T.C.O.P.No.259 of 2015 on the file of the Motor Accidents Claims Tribunal, II Additional District Judge, Tiruvallur at Poonamallee.

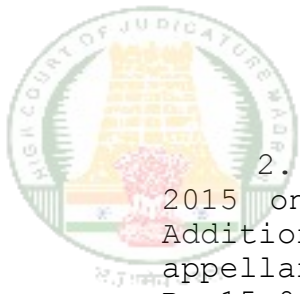
For Appellant :Mrs.A.Subadra

For R1 : Ex-parte before Tribunal

For R2 : Mr.C.Bhuvana Sankar

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant against the award dated 10.11.2017 made in M.A.T.C.O.P.No.259 of 2015 on the file of the Motor Accidents Claims Tribunal, II Additional District Judge, Tiruvallur at Poonamallee.



2. The appellant is the claimant in M.A.T.C.O.P.No.259 of 2015 on the file of the Motor Accidents Claims Tribunal, II Additional District Judge, Tiruvallur at Poonamallee. The appellant has filed the said claim petition claiming a sum of Rs.15,00,000/- as compensation for the death of one Vijayakanth, who died in the accident that took place on 02.03.2015.

3. As per the claim petition, on 02.03.2015 at about 4.30 p.m., the deceased was walking on the Poonamallee to Mount Road in front of SRMC Hospital, Main gate, Porur. At that time, the driver of the private bus bearing registration No.TN 21 AK 6050 drove the vehicle in a rash and negligent manner and hit the deceased. In the Impact, the deceased sustained multiple grievous injuries and he was admitted into the SRMC Hospital, Porur. However, in spite of treatment, the deceased died due to the injuries sustained in the accident on the same day. According to the claimant, the deceased was 32 years old, a bachelor. He was working as a Painter and earning a sum of Rs.600/- per day. With these particulars, the claim petition was filed before the Tribunal.

4. The second respondent/Insurance Company filed a counter statement denying the age, avocation and income of the deceased. It was also stated that the bus was driven carefully however, it was the deceased who suddenly darted across the road, which resulted in the accident. Therefore, it was contended that the Insurance Company is not liable to pay any compensation amount to the claimant.

5.Before the Tribunal, on behalf of the claimant, the claimant examined herself as P.W.1 and one Rajarajan an eye witness to the accident was examined as P.W.2. Exs.P1 to P9 were marked. On behalf of the respondents neither any witness was examined nor any document marked.

6.The Tribunal on appreciation of the oral and documentary evidence held that the driver of the bus was negligent in driving the bus and caused the accident. To come to such a conclusion, the Tribunal relied on the deposition of P.W.2, eye witness. As far as compensation is concerned, the Tribunal concluded that though there was no documentary evidence marked to prove the income of the deceased, at the age of 32 years, the deceased would have earned at least a sum of Rs.7,500/- per month and paid a sum of Rs.5,000/- towards his family, by retaining a sum of Rs.2,500/- with him. Accordingly, a sum of Rs.5,000/- was fixed as notional income of the deceased. As regards multiplier, the Tribunal taking note of the age of the appellant has applied multiplier '8' and awarded a sum of Rs.4,80,000/- towards loss of income. For funeral expenses, the Tribunal awarded Rs.25,000/-. For love and affection as well as the pain and suffering, a sum of Rs.1,00,000/- was awarded by



the Tribunal. In all a total sum of Rs.6,05,000/- was awarded by the Tribunal as compensation.

7. Assailing the award passed by the Tribunal, this appeal is filed by the claimant for enhancement of compensation. The second respondent/Insurance Company has not preferred any cross objection. Therefore, this Court is not inclined to deal with the liability on the part of the second respondent/Insurance Company to pay the compensation.

8. The learned counsel appearing for the appellant would vehemently contend that the Tribunal has fixed a meagre sum of Rs.5,000/- per month as notional income of the deceased. The deceased was aged 32 years old at the time of accident. He was engaged as a painter. He was unmarried. The deceased was having robust health and had he been alive, he could have morally and financially supported the claimant/appellant. Therefore, the learned counsel for the appellant prayed this Court to take at least a sum of Rs.15,000/- as notional income of the deceased. Even in the claim petition it was clearly stated that the deceased was earning a sum of Rs.600/- per day as a painter. The Tribunal did not award any amount towards loss of amenities to the claimant/appellant. In any event, the amount awarded by the Tribunal is very meagre and it warrants enhancement by this Court.

9. On the above contention this Court heard the counsel for the second respondent/Insurance Company and perused the materials placed on record.

10. Admittedly, the deceased was 32 years old at the time of accident. The deceased was a bachelor. In the claim petition, it was stated that the deceased earns a sum of Rs.600/- per day. The accident took place on 02.03.2015. Taking note of the cost of living that was prevailing at that point of time it cannot be gainsaid that the deceased could not have earned at least a sum of Rs.600/- per day. Therefore, this Court feels it reasonable to fix the sum of Rs.600/- per day as the notional income of the deceased. If that is taken note of, the deceased could have earned at least a sum of Rs.15,000/- in 25 working days a month. Thus, it would be reasonable to fix notional income of the deceased at Rs.15,000/- per month. At the same time, the Tribunal given 1/3rd deduction which is palpably erroneous. When the deceased died as a bachelor 50% of his income has to be deducted towards his personal expenses as per the decision of the Honourable Supreme Court in Sarla Verma & others Vs. Delhi Transport Corporation & another reported in 2009 (2) TNMAC 1 SC. As far as the multiplier is concerned, the Tribunal has rightly adopted multiplier '8' taking note of the age of the appellant/claimant.



11. In the light of the above, this Court fixes a sum of Rs.7,500/- per month as notional income of the deceased, for 12 months it would come to Rs.90,000/- per annum. By applying multiplier 8, the loss of income of the deceased could be determined at Rs.7,20,000/- as against the sum of Rs.4,80,000/-.

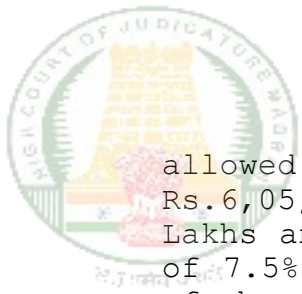
12. The Tribunal awarded a sum of Rs.25,000/- towards funeral expenses and it is excessive. This Court is of the view that awarding a sum of Rs.15,000/- towards funeral expenses would meet the ends of justice and accordingly, the amount of Rs.25,000/- awarded by the Tribunal is modified to Rs.15,000/-.

13. Similarly, the Tribunal awarded a total sum of Rs.1,00,000/- towards pain and suffering, loss of love and affection, loss of filial compensation. The Tribunal has integrated all the heads and awarded Rs.1,00,000/-, which does not cut ice with this Court. When the deceased died due to the injuries sustained in the accident within a few hours, while treating the claim as a death claim and awarding compensation, the question of awarding pain and suffering will not arise. Instead, this Court hereby awards a sum of Rs.15,000/- transportation; Rs.15,000/- towards loss of estate and a sum of Rs.40,000/- towards filial compensation. In all, as against the sum of Rs.1 lakh awarded by the Tribunal, a sum of Rs.70,000/- is awarded under the above three heads.

14. Having regard to the above conclusion, the award passed by the Tribunal is modified, granting a total sum of Rs.8,48,000/-.

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of income	Rs.4,80,000/-	Rs.7,20,000/-	Enhanced
2.	Funeral expenses	Rs.25,000/-	Rs.15,000/-	reduced
3.	Transportation	---	Rs.15,000/-	Granted
4.	Loss of estate	---	Rs.15,000/-	Granted
5.	Loss of love and affection and pain and sufferings	Rs.1,00,000/-	---	---
6.	Loss of filial compensation	---	Rs.40,000/-	Granted
	Total	Rs.6,05,000/-	Rs.8,05,000/-	Enhanced by Rs.2,00,000/-

15. In the result, this Civil Miscellaneous Appeal is partly



allowed. No costs. The compensation awarded by the Tribunal at Rs.6,05,000/- is hereby enhanced to Rs.8,05,000/- [Rupees Eight Lakhs and Five Thousand only] together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. The 2nd respondent/Insurance Company is directed to deposit the enhanced award amount, now determined by this Court, along with interest, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.A.T.C.O.P.No.259 of 2015, on the file of the Motor Accidents Claims Tribunal, II Additional District Judge, Thiruvallur at Poonamallee. On such deposit, the appellant is permitted to withdraw the amount, now awarded by this Court, along with interest and costs, less the amount if any, already withdrawn by making necessary application before the Tribunal. Since, this Court had enhanced the compensation, the appellant/claimant is directed to pay necessary Court fee, if any, on the enhanced compensation.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

ssi

To:

The II Additional District Judge,
Motor Accidents Claims Tribunal,
Tiruvallur at Poonamallee.

Copy To

The Section Officer,
V.R.Section,
High Court,
Chennai.

+1cc to M/s.M.Malar, Advocate, S.R.No.17648

C.M.A.No.1178 of 2018

SRA(CO)
RGA(25/04/2022)