IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.10.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI
and
THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.3416 of 2021

1.Aswath Narayanan

2.Anandhi

3.Ragavan (died)

4.Chellammal .. Appellants

Vs.

1.M.Y.Samim Mohammed

2.United India Insurance Company Limited,
Motors Third Party Claims Hub,
Regional office,
Silingi Building, 4^{th} floor,
134 Greams Road,
Chennai – 600 006. .. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 18.10.2019, made in M.C.O.P.No.8205 of 2015, on the file of the Motor Accident Claims Tribunal, Special Sub Court No.II, Small Causes Court, Chennai.

For Appellants : Ms.S.R.Suga
For R2 : Mr.S.Arun Kumar

JUDGMENT

(Judgment of the Court was delivered by V.M.VELUMANI, J.)

This Civil Miscellaneous Appeal has been filed by the appellants-claimants for enhancement of compensation granted by the Tribunal in the award dated 18.10.2019, made in M.C.O.P.No.8205 of 2015, on the file of the Motor Accident Claims Tribunal, Special Sub Court No.II, Small Causes Court, Chennai.

2.The appellants are the claimants in M.C.O.P.No.8205 of 2015, on the file of the Motor Accident Claims Tribunal, Special Sub Court No.II, Small Causes Court, Chennai. They filed the said claim petition claiming a sum of Rs.1,43,00,000/- as compensation for the death of one Renganathan, who died in the accident that took place on 07.10.2014.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the Tata Safari belonging to 1st respondent and directed the 2nd respondent-Insurance Company, being the insurer of the Tata Safari to pay a sum of Rs.37,61,300/- as compensation to the appellants 1 & 2.

4.Not being satisfied with the amounts awarded by the Tribunal, the appellants have come out with the present appeal.

5.The learned counsel appearing for the appellants contended that at the time of accident, the deceased was working as Junior Engineer, Grade – I in Tamilnadu Generation and Distribution Corporation, Cuddalore and was earning a sum of Rs.71,260/- per month. But, the Tribunal without any valid reason, fixed a meagre sum of Rs.59,760/- per month as the income of the deceased. The Tribunal ought to have applied proper multiplier and awarded compensation, instead of awarding compensation by adopting split multiplier method. The Tribunal ought to have calculated the income tax by applying proper tax slabs. The amounts awarded by the Tribunal towards loss of love and affection, loss of estate and funeral expenses are meagre. The Tribunal has not awarded any amount towards mental agony and loss of expectations of life and prayed for enhancement of compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal considering Ex.P14 /

salary slip, rightly fixed the monthly income of the deceased at Rs.59,760/- and awarded compensation towards loss of dependency and the same is not meagre. The deceased was aged 54 years at the time of accident and his remaining period of service is only 3 years and 6 months. The Tribunal considering the same, has rightly applied split multiplier method and awarded compensation towards loss of dependency and the same is proper. The appellants are not entitled to compensation towards loss of dependency by fixing monthly income of the deceased at Rs.71,260/-. The amounts awarded by the Tribunal under other heads are not meagre. The appellants have not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

7.Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the 2nd respondent-Insurance Company and perused the entire materials on record.

8.From the materials on record, it is seen that it is the case of the appellants that at the time of accident, the deceased was aged 54 years, working as Junior Engineer, Grade – I in Tamilnadu Generation and Distribution Corporation, Cuddalore and was earning a sum of

Rs.71,260/- per month. To prove the said contention, the appellants produced the Service Register of the deceased and salary slip of the deceased and marked the same as Exs.P13 & P14 respectively. The Tribunal after considering Ex.P14 / salary slip of the deceased, has erroneously fixed a sum of Rs.59,760/- as monthly income of the deceased. As per Ex.P14, the deceased was getting gross salary at Rs.71,260/- per month and hence, the monthly income of the deceased is fixed at Rs.71,260/-. As per Ex.P5 / driving license, the deceased was aged 54 years at the time of accident. The deceased was working as Junior Engineer, Grade – I in Tamilnadu Generation and Distribution Corporation, Cuddalore, which is a permanent job. The Tribunal following the judgment of the Hon'ble Apex Court reported in ***2017 (2) TNMAC 609 (SC), [National Insurance Company Limited Vs. Pranay Sethi and others]***, rightly granted 15% enhancement towards future prospects. The Tribunal taking into consideration the age of the deceased, fixed entire salary for 42 months (3 years and 6 months) and 50% of the salary for 7 ½ years, applied two multipliers and granted compensation towards loss of dependency.

8(i).The Hon'ble Apex Court in the judgment reported in ***(2022) 5***

SCC 107 [R.Valli and others Vs. Tamil Nadu State Transport Corporation Ltd.], following the judgment reported in ***2017 (2) TNMAC 609 (SC),*** *cited supra*, held that method of determination of compensation by applying two multipliers is erroneous and contrary to the judgments of the Hon'ble Apex Court reported in ***2017 (2) TNMAC 609 (SC)*** and ***2009 (2) TNMAC 1 SC Supreme Court, [Sarla Verma & others Vs. Delhi Transport Corporation & another]***. The Hon'ble Apex Court in the said judgment held that multiplier applicable is based on the age of the deceased. In view of the judgment of the Hon'ble Apex Court referred to above, the split multiplier applied by the Tribunal is set aside. The appellants are entitled to compensation by applying multiplier '11', as per the judgment of the Hon'ble Apex Court reported in ***2009 (2) TNMAC 1 SC Supreme Court,*** *cited supra*. There are three dependants of the deceased and the Tribunal has rightly deducted $1/3^{rd}$ towards personal expenses of the deceased. The monthly income of the deceased is fixed at Rs.71,260/-. The deceased is liable to pay Income Tax for the said amount. Thus, the calculation for arriving annual income is as follows :-

Monthly salary of the deceased	...	Rs.71,260.00
ADD: 15% enhancement towards future prospects	...	Rs.10,689.00
		Rs.81,949.00

Annual income (81,949/- X 12) ... Rs.9,83,388/-

The accident has occurred on 07.10.2014.

Income Tax Slab for Assessment Year 2015-2016:

Upto Rs.2,50,000/-	-	Nil
From Rs.2,50,000/- to Rs.5,00,000/- (10%) [Rs.2,50,000/- X 10%]	-	Rs.25,000.00
Rs.5,00,000/- to Rs.10,00,000/- (20%) [Rs.9,83,388/- - Rs.5,00,000/- = Rs.4,83,388/- = Rs.4,83,388/- X 20%]	-	Rs.96,677.60
		Rs.1,21,677.60 (rounded off to Rs.1,21,678/-)

Annual income after deducting income tax (Rs.9,83,388/- – Rs.1,21,678/-) - Rs.8,61,710/-

Thus, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.63,19,206.67/- [rounded off to Rs.63,19,207/-] (Rs.8,61,710/- X 11 X 2/3).

8(ii).From the materials on record, it is seen that the Tribunal in addition to granting a sum of Rs.40,000/- each towards loss of parental consortium to the appellants 1 & 2, who are the children of the deceased, erroneously awarded a sum of Rs.50,000/- each to appellants 1 & 2 towards loss of love and affection. The appellants 1 & 2, who are the children of the deceased are not entitled to any amount towards loss of love and affection. Thus, the amount awarded by the Tribunal towards loss of love and affection to appellants 1 & 2 is liable to be set aside and it is hereby set aside. The amounts awarded by the Tribunal towards funeral expenses and loss of estate are just and reasonable and hence, the same are hereby confirmed. Thus, the compensation awarded by 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 dependency	35,51,276/-	63,19,207/-	Enhanced
2.	Loss of estate	15,000/-	15,000/-	Confirmed
3.	Funeral expenses	15,000/-	15,000/-	Confirmed

4.	Loss of love and affection to appellants 1 & 2	1,00,000/-	-	Set aside
5.	Parental consortium to appellants 1 & 2	80,000/- (Rs.40,000/- each)	80,000/- (Rs.40,000/- each)	Confirmed
	Total	**Rs.37,61,276/-** Rounded off to **Rs.37,61,300/-**	**Rs.64,29,207/-** Rounded off to **Rs.64,29,300/-**	**Enhanced by Rs.26,68,000/-**

9.In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.37,61,300/- is hereby enhanced to Rs.64,29,300/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd respondent-Insurance Company is directed to deposit the award amount, now determined by this Court along with 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, to the credit of M.C.O.P.No.8205 of 2015, on the file of the Motor Accident Claims Tribunal, Special Sub Court No.II, Small Causes Court, Chennai. On such deposit, the appellants 1 & 2 are permitted to withdraw their respective share of the award amount now determined by this Court as per the ratio of apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. The appellants are directed to pay the necessary Court fee on the enhanced amount of Rs.26,68,000/-, now determined by this Court. No costs.

(V.M.V., J) (S.M., J)
28.10.2022

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Index : Yes / No
Internet : Yes / No

To

1.The Special Subordinate Judge No.II,
Motor Accidents Claims Tribunal,
Small Causes Court,
Chennai.

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

V.M.VELUMANI, J.

and

SUNDER MOHAN, J.

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C.M.A.No.3416 of 2021

28.10.2022
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