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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CMA.No.1671 of 2018

1.Shanthi
2.Sivanesh
3.Viknesh

...Appellants/Petitioners

v.

1.Saraswathi
2.United India Insurance Co., Ltd.,
Shanmuga Complex, 1-15, 24-H,
1st Floor, New Edappadi Road, Sankari

..Respondents / Respondents

Notice to R1 may be dispensed with
for the set ex-parte before the Tribunal.

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to enhance the award in the judgment and decree dated 04.01.2018 in MACTOP No.711 of 2014 on the file of the Motor Accident Claims Tribunal / the Principal District Court, Namakkal.

For Appellants : Mr.C.Paraneedharan

R1 : Set exparte before the Tribunal

For R2 : Mr.C.Paranthaman

J U D G M E N T

The claimants in MCOP No.711 of 2014 on the file of the Principal District Court, Namakkal / Motor Accident Claims Tribunal, Namakkal, are the appellants herein. They are aggrieved with the grant of compensation of a sum of Rs.6,50,800/- by the Tribunal towards the unfortunate death of Selvanatarajan due to a motor-cycle accident. The 1st claimant is the wife of



Selvanatarajan and the 2nd and 3rd claimants are the two sons of deceased Selvanatarajan.

2.On 15.03.2014 at around 5.30 p.m, Selvanatarajan was driving his Bajaj Motor-cycle bearing Registration No.TN-34-8669 near Sembampalayam bus stop on the left side of the Salem to Tiruchengode Main Road. At that time, the driver of a Tata ACE CLE 275 vehicle, bearing Regn. No.TN-34-J-8685, was said to have driven the said vehicle in a rash and negligent manner in high speed and he hit against the Bajaj Motor-cycle and Selvanatarajan sustained grievous injuries in all parts of the body. He was admitted to Thiru Kumaran Hospital, Tiruchengode for first-aid and later taken to Erode for further treatment and on the way to Erode, he suffered from breathing problems and he was again admitted to Tiruchengode, where the Doctors who examined him, declared him dead. The First Information Report in Crime No.52 of 2014 had been registered by Mallasumudram Police Station under Sections 279, 337, 304-A of IPC., against the driver of the vehicle bearing Regn.No.TN-34-J-8685. Claiming compensation for the death, the claim petition had been filed.

3.A counter had been filed by the 2nd respondent / United India Insurance Co. Ltd., before the Tribunal wherein, they stated that Selvanatarajan did not have a valid driving license. It was stated that he was responsible for the accident. They denied that they were liable to pay compensation for the death of Selvanatarajan.

4.The parties were invited to graze the witness box and during the course of trial, the 1st claimant was examined as PW-2. It is also to be mentioned that, simultaneously, the Tribunal had also taken up for consideration MCOP No.713 of 2014, which had been filed for injuries suffered in that accident to one Manikandan and he was examined as PW1. The Doctor was examined as PW-3. On the side of the respondents the 2nd respondent / Insurance Company examined their Assistant Manager, Palanisamy as RW-2 and the Road Transport Official, Suresh Kumar as RW-1. The claimants marked Exs.P1 to P23. The copy of the FIR dated 16.03.2014 was marked as Exs.P1 and P8. The M.V.I. Report dated 25.03.2014 was marked as Ex.P2 and P10. The rough sketch dated 16.03.2014 was marked as Exs.P3 and P9. The Insurance Policy was marked as Exs.P7 and P15. The Post-mortem report was marked as Ex.P11. The Death Certificate was marked as Ex.P13.

5.On the side of the respondents, the Insurance Policy was marked as Ex.R3. The Court also marked as Court Documents Exs.C1 to C4, which are the bank details of the claimants.



6.The Tribunal took up as the first issue for consideration, the determination of negligence. The Tribunal considered Ex.P1, the First Information Report and observed that Selvanatarajan had driven his two-wheeler Bajaj Motor-cycle bearing Regn. No.TN-34-8669 along with Manikandan, who had suffered injuries as pillion rider, towards Salem in Tiruchengode Main Road. At that time, the driver of the Tata ACE CLE 275 vehicle bearing Regn. No.TN-34-J-8685 came on the opposite direction and dashed against two-wheeler. The Tribunal found that the accident had occurred only due to the rash and negligent driving of Tata Ace vehicle. That finding is hereby affirmed.

7.The Tribunal also found that considering the Certificate of Insurance Policy Ex.R3, the driver of the offending vehicle, namely Tata Ace, did not have any driving licence at the time of accident. He was also said to have been in an intoxicated mode. In view of that fact, the Tribunal held that there was breach of the policy and therefore ordered pay and recovery namely, the Insurance Company shall in the first place, pay the compensation and then recover it from the 1st respondent namely, Saraswathi.

8.Thereafter, the Tribunal proceeded to determine the compensation payable. The Tribunal, had, in the absence of any materials regarding the salary of Selvanatarajan, determined the salary at Rs.6,000/-. It was observed that he worked as an Agricultural Coolie and was aged 52 years. The learned counsel for the appellants / claimants assailed that particular determination of the salary and placed reliance on the judgment of a Division Bench of this Court reported in CDJ 2019 MHC 5221, M/s.Reliance General Insurance Company Limited Vs. Susila & Others. In that particular case, an Agricultural Coolie aged 27 years, had unfortunately died in the accident that took place on 28.04.2013. Taking into consideration that particular fact, the income of the deceased was determined at Rs.10,000/-.

9.However, reliance on the aforementioned judgment was questioned by the learned counsel for the 2nd respondent / Insurance Company, who pointed out one distinguishing factor namely, that the deceased, in the judgment relied on the learned counsel for the appellants, was aged 27 years and the deceased, in the instant case, was aged 52 years. It was contended that, in view of the advancement of the age, the efficiency of the working output would have naturally decreased and the deceased would have been paid much lesser sum as monthly income.



10. Taking into consideration the rival submissions, I would determine the monthly income of the deceased at Rs.7,000/-. The Tribunal had granted 10% towards future prospects. The future prospects comes to Rs.700/-. The total monthly income would be Rs.7,700/-. The Tribunal had deducted 1/3rd towards his personal expenses. That would workout to Rs.2,566/- (Rs.7,700 / 3). I would round it off to Rs.2,500/- for personal expenses, which would mean that his contribution to the family would come to Rs.5,200/- per month (Rs.7,700 - Rs.2,500/- = Rs.5,200/-). Therefore, the annual income would be Rs.62,400/- (Rs.5,200 x 12). The multiplier that has to be adopted is '11'. The total loss of dependency would be Rs.6,86,400/- (Rs.62,400/- x 11). Loss of Estate at Rs.15,000/- had been granted by the Tribunal, which I would retain. Funeral Expenses at Rs.15,000/- had been granted, which is also retained. Loss of Consortium at Rs.40,000/- had been granted, which is also retained. It is to be noted that towards Love and Affection, the Tribunal had not granted any compensation. Hence, this Court grants a sum of Rs.20,000/- towards Love and Affection for each son, which would mean Rs.40,000/- totally (Rs.20,000 x 2). The total compensation now granted is Rs.7,96,400/-. The enhanced compensation breakup is as follows:

Heads	Amounts
Loss of Dependency	Rs.6,86,400/-
Loss of Estate	Rs.15,000/-
Funeral Expense	Rs.15,000/-
Loss of Consortium	Rs.40,000/-
Loss of Love and Affection (Rs.20,000 x 2)	Rs.40,000/-
Total	Rs.7,96,400/-

11. The Civil Miscellaneous Appeal is allowed to that extent enhancing the compensation which had been determined by the Tribunal at Rs.6,50,800/- to Rs.7,96,400/-. The Insurance company shall deposit the difference in compensation amount i.e., Rs.1,45,600/- with interest of 7.5% per annum from the date of filing of the petition till the date of deposit within a period of eight weeks from the date of receipt of a copy of this Judgment. On such deposit, the appellants / claimants are permitted to withdraw the same and Additional Court fees if any has to be paid. No order as to costs.



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12. With regard to apportionment, the 2nd and 3rd appellants are entitled to get Rs.2,00,000/- each and the balance sum shall go to the 1st appellant. The finding of pay and recovery ordered by the Tribunal is retained as discussed by me earlier.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

Sub Assistant Registrar

smv

To:-

1. The Motor Accident Claims Tribunal /
the Principal District Judge, Namakkal.

Copy to:
The Section Officer,
V.R. Section, High Court,
Madras.

+1cc to Mr.C.Paranthaman, Advocate SR.No.20185

CMA.No.1671 of 2018

PM(CO)
CB(29/04/2022)