IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.04.2022

CORAM

THE HON'BLE Mr. JUSTICE C.V.KARTHIKEYAN

C.M.A.No.1914 of 2018

1.Mahalakshimi
2.Sadhasivam ... Appellants

Vs.

1.Sangeetha
2.M/s.The Oriental Insurance Company Ltd., Kumbakonam. ... Respondent

Prayer: This Civil Miscellaneous Appeal has been filed under Section 173 of M.V.Act, 1988, against the fair and decreetal order dated 02.09.2015 in M.C.O.P.No.214 of 2013 on the file of the Motor Accidents Claims Tribunal Authority/Additional District Judge, Ariyalur.

For Appellants : Mr.M.Saravanakumar

For Respondent No.1 : Mr.V.Athikesavan

For Respondent No.2 : Mr.D.Bhaskaran

JUDGMENT

The claimants in MCOP No.214 of 2013 on the file of the Motor Accident Claims Tribunal Authority/Additional District Court, Ariyalur, are the appellants herein. They are the parents of a young child viz., Dharani aged 5 years at the time of accident, who unfortunately died in a Motor Accident on 30.05.2013 at around 10.15 a.m. when she was standing on the threshold of her house. At that time, an Eicher Medium Goods Vehicle bearing registration No.TN 46 AC 8354 had dashed against the young child and owing to the injuries caused, she died on the same day.

2.Claiming compensation for that unfortunately death, the parents had filed the aforementioned MCOP No.214 of 2013 and aggrieved by the compensation granted, they have preferred this Civil Miscellaneous Appeal before the this Court.

3.The second claimant/father of the child had examined himself as PW1 and ten documents were marked as Ex.P1 to P10 including the copy of the First Information Report, Post Mortum Report, the charge sheet, the death certificate and also the legal heirs certificate. On the side of the respondent, three witnesses were examined as RW1 to RW3 and eight documents were marked as Ex.R1 to R8. The insurance policy was marked as Ex.P4.

4.The Tribunal took up for consideration as the first issue, the manner in which, the accident occurred and whether it was owing to the rash and negligent driving of the driver of the offending vehicle. It was found as a fact that the vehicle was actually driven in a rash and negligent manner and also that, the deceased child was standing outside the threshold of her house and at that time, the vehicle had hit her and caused her death. Therefore, that particular issue was decided by holding that the accident occurred only due to the rash and negligent driving of the vehicle. I would affirm that finding of the trial Court.

5.Thereafter, the Tribunal proceeded to determine the compensation payable. The Notional income of Rs.15,000/- per annum was taken into consideration since the age of the child was 5 years at the time of accident. It had been urged before the Tribunal that a sum of Rs.30,000/- per annum should have been taken as notional income but the Tribunal thought it would be more prudent to take a sum of Rs.15,000/-per annum.

6.The learned counsel for the appellants also urged this Court that this Court should reconsider that particular notional income as determined by the Tribunal.

7.However, as stated by the learned counsel for the respondent, the issue of notional income for a child less than 10 years has been an oscillating factor. If the child is 10 years and more than a more reasonable notional income can be determined on the basis of the progress, which the child would have made 5 years thence.

8.The entire aspect falls under the zone of discretion. While exercising discretion, it is also expected that prudence is adopted. I therefore retain the notional income at Rs.15,000/- as determined by the

Tribunal. When that is taken as the annual income and if multiplier 15 is adopted, the total income, which can be granted, would be Rs.2,25,000/-. The Tribunal had granted a lumpsum for conventional heads without giving any reason. I would therefore grant a sum of Rs.40,000/- to each of the claimants/appellants towards loss of love and affection, a sum of Rs.15,000/- towards funeral expenses and another sum of Rs.15,000/- towards loss of estate. The compensation is granted as follows under the following heads:

Loss of income	...	Rs.2,25,000/-,
Loss of love and affection (each of the claimants Rs.40,000/- x 2 = 80,000)	...	Rs.80,000/-,
Loss of estate	...	Rs.15,000/-,
Funeral expenses	...	Rs.15,000/-.
Total	...	Rs.3,35,000/-

9.In fine, the appeal is allowed. No costs. The award is modified. The compensation award is enhanced to Rs.3,35,000/-.

10.The second respondent/Insurance Company is directed to deposit the enhanced amount, less the amount already deposited, if any, with interest at the rate of 7.5% per annum from the date of filing of the petition till date of deposit within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the appellants/claimants are to be apportioned equally and they are permitted to withdraw the award amount on proper identification, after adjusting the amount, if any, already withdrawn. The pay and recovery as ordered by the Tribunal is hereby confirmed.

Index:Yes/No
Internet:Yes/No
sms **01.04.2022**
To
1.The Motor Accidents Claims Tribunal Authority/
Additional District Judge, Ariyalur.

2.M/s.The Oriental Insurance
Company Ltd., Kumbakonam.

C.V.KARTHIKEYAN,J

sms

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