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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.03.2022

CORAM

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

C.M.A.No.1974 of 2018

1.S.Kala

2.Siddhartha

3.Vivek

...Appellants/Petitioners

Vs.

1.P.Murugesan

2.The Reliance General Insurance Company Limited,

Represented by its Branch Manager,

Sri Lakshmi Complex, 1<sup>st</sup> Floor,

Bharathi Street, Omaloor Main Road,

Swarnaburi, Salem - 636 004.

...Respondents/Respondents

(1<sup>st</sup> Respondent Set-Exparte

in Lower Court- hence given up)

Prayer: The Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, seeking to set aside the Award and decree made in M.C.O.P.No.382 of 2012, dated 17.11.2015, on the file of the learned District Judge/ Motor Accidents Claims Tribunal, Nagapattinam.

For Appellants : Mr.PA.Kadirvel

For R2 : Mr.S.Arun Kumar

For R1 : Given up vide EB

JUDGMENT

Heard the learned counsel for the appellants and the learned counsel for the respondents.



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2.The matter is posted for admission. The learned counsel for the appellant stated that at the time of the accident the deceased was aged about 54 years and the Tribunal, for calculating the loss of income, had adopted a multiplier of '4' and the Tribunal had adopted the balance multiplier of '7' towards pension. I would rather hold that multiplier '11' is taken. In view of that particular fact, the appeal is admitted.

3.The claimants in M.C.O.P.No.382 of 2012 are the appellants herein. The aforementioned M.C.O.P, had been filed before the Motor Accidents Claims Tribunal/District Judge, Nagapattinam District, claiming compensation for the death of Shanmugam, who was aged about 54 years and was working as a Head Master in Karapidagai Government High School. The first claimant was his wife and the second and third claimants were his son and daughter. It was claimed that the deceased was getting a salary at Rs.41,166/- per month.

4.On 12.12.2011, at about 12.00 p.m., when the deceased was riding his motorcycle bearing registration No.PY.02 C 9082 in Tiruthupoondi - Velankanni East Coast Road, while he was reaching Karai Nagar Periyachi Kovil, a lorry bearing Registration No.TN 52 A 7795, was driven by its driver in a rash and negligent manner and dashed on the backside of the motorcycle. The deceased Shanmugam fell down and suffered grievous head injuries. Immediately, he was taken to Nagapattinam Government Hospital and then, he was referred to Thanjavur Vinothagan Memorial Hospital and was treated as in patient, but, he died on 18.12.2011.

5.Thereafter, First Information Report was registered in Crime No.359/2011 for the offence under Sections 279, 337 and 304(A) of IPC by the jurisdictional police.

6.In M.C.O.P.No.382 of 2012, by Judgment dated 17.11.2015, the Tribunal after considering the evidence, granted compensation of Rs.20,14,912/-.

7.Questioning that particular award, the claimants have come forward with this appeal.

8.It is admitted by Mr.S.Arun Kumar, learned counsel for the second respondent that the Tribunal had erred in splitting the multiplier into two parts namely multiplier of '4' with respect to the calculation of the loss of income and multiplier of '7' with respect to the calculation of loss of pension. It



9. Heard the learned counsels. I would interfere with the order under appeal.

11. With respect to the compensation, the Tribunal had taken the salary of the deceased at Rs.40,000/- per month and I would affirm the same. The Tribunal had also taken 1/3<sup>rd</sup> deduction namely Rs.13,333/- towards his own expenses and I would also affirm the same. The Tribunal had also taken the balance 2/3<sup>rd</sup> namely Rs.26,666/- as probable contribution to the family and I would affirm the same. The annual loss of income would then be Rs.3,19,992/- (Rs.26,666/- x 12). Adopting a multiplier of '11', the loss of income will be Rs.35,19,912/- (Rs.3,19,992/- x 11). The Tribunal erred in applying the multiplier separately in fractions towards the loss of pension and loss of income. The compensation towards loss of income would be as aforesaid, Rs.35,19,912/-.

12. The Tribunal had also granted a sum of Rs.25,000/- for loss of love and affection for each one of the petitioners and I would affirm the same. The Tribunal had granted medical expenses of Rs.94,000/-. I would confirm the same. The Tribunal had granted a sum of Rs.6,000/- towards funeral expenses and I would affirm the same. The total compensation now granted would be as follows:

- 1) Loss of income Rs.35,19,912/-
- 2) Loss of love and affection Rs.75,000/- [25,000 X 3]
- 3) Medical Expenses Rs.94,000/-
- 4) Funeral Expenses Rs.6,000/-

In all a total sum of Rs.36,94,912/-.

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Thirty Six Thousand Ninety Four Thousand Nine Hundred and Twelve only] together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2<sup>nd</sup> respondent 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 eight weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.382 of 2012, on the file of the Motor Accidents Claims Tribunal, District Judge, Nagapattinam. On such deposit, the appellants/claimants are permitted to withdraw 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 application before the Tribunal. There shall be no order as to costs.

s/d-  
Assistant Registrar

True Copy

Sub-Assistant Registrar

dua/ssi

To  
1.The District Judge,  
Motor Accident Claims Tribunal,  
Nagapattinam.

Copy to  
The Section Officer,  
VR Section, High Court,  
Madras.

+1 CC to Mr.PA.Kadirvel, Advocate sr 16052  
+1 CC to Mr.S. Arun Kumar, Advocate sr 16623.

CMA.No.1974 of 2018

NRJK(CO)  
SP(05/05/2022)