IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 22.03.2022

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

CMA.No.2014/2018

1.Lakshmi
2.Amsa
3.Mani
4.Lakshmi
5.Vellaiammal
6.Annathurai
7.Parvathi
8.Palanisamy
9.Sampoornam
10.Manikandan ... Appellants/Petitioners

Versus

1.Parthiban

2.The Manager,
IFFCO TOKIO General Insurance Company Limited,
No.195, 3rd Floor,
Thulasi Chambers,
T.V.Salai, R.S.Puram,
Coimbatore. ... Respondents/Respondents

Prayer : - Civil Miscellaneous Appeal filed under under Section 173 of the Motor Vehicles Act, 1988 to award the balance compensation amount of Rs.5,23,690/- as prayed for in M.C.O.P.No.168/2008 dated 18/03/2016 on the file of the learned Motor Accidents Claim Tribunal/ Principal District Judge, Namakkal.

For Appellants :Mr.A.R.Suresh

For R2 :Mr.S.Arun Kumar

JUDGMENT

(1) The claimants in MCOP.No.168/2008 which was on the file of the Motor Accidents Claim Tribunal/Principal District

Court, at Namakkal, are the appellants herein, aggrieved by the order dated 18.03.2016, by which the Tribunal adjudicated the compensation payable owing to the death of Krishnan, who was the husband of the 1st claimant and father of claimants 2 to 10.

(2) Krishnan was proceeding in a cycle on 15.12.2017 at around 3.00 p.m., near Mohanur Bus Stand. At that particular point of time, a two-wheeler bearing Registration No.TN-28-AB-1447 is said to have been driven in a rash and negligent manner and has dashed against the cycle driven by Krishnan. He suffered multiple injuries all over the body including a head injury. He was admitted in the Government Hospital at Namakkal and later, shifted to C.M.Hospital at Namakkal for further treatment, but died on 21.12.2007. Seeking compensation owing to his sudden death due to the said accident, the claimants had filed MCOP.No.168/2008.

(3) A counter had been filed by the 2nd respondent/Insurance Company. Parties were invited to graze the witness box and accordingly, on the side of the claimants, 2 witnesses were examined. PW1 was the widow of Krishnan and PW2-Sudhakar was said to be the employer of Krishnan.

(4) The claimants also marked Exs.P1 to P6. The relevant documents would be, Ex.P1-copy of the FIR dated 15.12.2007 ; Ex.P2-Medical Bills for the expenses incurred for the treatment to Krishnan ; and Ex.P3-Discharge Summary.

(5) The respondents did not examine any witnesses nor did they mark any documents. On the basis of the evidence produced, the Tribunal first proceeded to determine the negligence with respect to the accident and found as a fact that Krishnan was riding in a bicycle on the left side of the road when the accident occurred and therefore, came to the conclusion that it was due to the rash and negligent driving of the motorcycle which bore Registration No.TN-28-AB-1447 which was the cause for the accident. Accordingly, the Tribunal directed that the insurer of the motorcycle should indemnify the owner of the motorcycle to pay the compensation.

(6) The Tribunal then decided to examine the compensation to be paid. In this connection, the Tribunal determined the age of the deceased at 55 years and also determined that since he was doing coolie work, reasonable income which can be determined as monthly income will be at Rs.5,000/-. He was aged 55 years and therefore, a multiplier of 11 was taken. The Tribunal also deducted 1/3 of his monthly income as a reasonable amount which he would have used for his personal

expenses and adopting the above said multiplier, the Tribunal came to the conclusion that the loss of income would be Rs.4,40,000/-. The calculation is as follows:-

Monthly income	Rs.5000/-
[-]1/3rd for personal expense	Rs.1667/-
Monthly income	Rs.3333/-
Annual income with multiplier	Rs.3333*12*11
Loss of income	Rs.4,39,956/- rounded off to Rs.4,40,000/-

(7) The Tribunal also awarded a sum of Rs.21,310/- towards medical bills on the basis of Ex.P2. The Tribunal also granted necessary amount towards loss of love and affection at Rs.10,000/- and Rs.5,000/- for funeral expenses and determined the total compensation payable at Rs.4,76,310/-.

(8) This has been assailed by the learned counsel for the appellants who drew my attention to the evidence of PW2, the employer who stated that the deceased was earning a sum of Rs.6,000/- per month. It was also stated by the learned counsel that since there were about 10 dependents, deducting 1/3rd towards personal expenses would not be appropriate and a smaller percentage should be deducted towards personal expenses and the learned counsel proposed that either 1/5 or 1/6 should be deducted towards personal expenses and more sum should be allotted as having been spent towards family. Learned counsel for the appellants also stated that future prospects had not been taken into consideration and in this connection, relied on the judgment of the Constitution Bench of the Hon'ble Supreme Court of India reported in 2016 [16] SCC 680 [National Insurance Company Limited V. Pranay Sethi and Others].

(9) Mr.S.Arun Kumar, learned counsel appearing for the 2nd respondent / Insurance Company however urged that retaining the deduction towards personal expenses at 1/3rd would be just and equitable owing to the fact that though there are ten dependents, they have all attained the age of majority and the daughters have also been married and are living separately. It is also stated by the learned counsel for the 2nd respondent/Insurance Company that future prospects will have to be necessarily considered and stated that 10% can be granted towards loss of future prospects.

(10) With respect to monthly income, since there is evidence available adduced by PW2 that the deceased was earning Rs.6000/- per month, let me take that statement into consideration and determine that the monthly income of the deceased was at Rs.6,000/-. If these parameters are now applied, the compensation to be granted towards loss of income including future prospects would now be

Monthly Income	Rs. 6,000/-
[-]1/3rd towards personal expenses	Rs. 2,000/-
Net Monthly Income	Rs. 4,000/-
[+] Future prospects @ 10%	Rs. 400/-
Total monthly income will be	Rs. 4,400/-
Annual income [Rs.4400*12]	Rs. 52,800/-
Applying Multiplier 11 [Rs.52800*11]	Rs.5,80,800/-

(11) I would retain the amount of Rs.21,310/- towards medical expenses and also retain the amount of Rs.10,000/- towards loss of love and affection and Rs.5,000/- towards funeral expenses. This would indicate that the total compensation now to be granted to the appellants would be Rs.6,17,110/-.

(1) This Civil Miscellaneous Appeal is allowed to that extent enhancing compensation which had been determined as Rs.4,76,310/- to Rs.6,17,100/-. The other aspects in the order shall remain the same.

(2) The Insurance Company/2nd respondent herein shall deposit the enhanced compensation amount of Rs.1,40,800/- with interest at the rate of 7.5% from the date of filing of the petition till the date of deposit within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the 1st appellant/widow is entitled to withdraw 50% and the balance amount is to be divided equally among appellants 2 to 10. No costs.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

AP
To

1.The Principal District Judge,
Motor Accidents Claims Tribunal,Namakkal.

2.The Manager,
IFFCO TOKIO General Insurance Company Limited,
No.195, 3rd Floor,
Thulasi Chambers,
T.V.Salai, R.S.Puram,
Coimbatore.

3.The Section Officer,
VR Records, High Court,
Madras.

+1cc to Mr.A.R.Suresh, Advocate Sr.19100
+1cc to Mr.S.Arunkumar, Advocate Sr.20012

CMA.No.2014/2018

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srg 12/04/2022