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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.03.2022

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

C.M.A. No.2187 of 2021

1. Usharani
2. Nithish
3. Monisha
4. Chinnapappa
5. Chinnathambi ...Appellants/Claimant

Vs.

1. RamyaRathish Kumar
2. The Manager,
IFFCO-TOKIO General Insurance Co. Ltd.,
No.28, North Usman Road,
T.Nagar, Chennai 600 017.
...Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, against the judgment and decree dated 15.03.2021 in MCOP.No.1088 of 2019 on the file of Special District Judge, Krishnagiri.

For appellant : Mr.Mukund R.Pandiyan

For respondents
for R1 : Notice returned-unclaimed
for R2 : Mr.S.Arunkumar

J U D G M E N T

[Judgment of the Court was delivered by K.KALYANASUNDARAM, J]

The claimants in MCOP.No.1088 of 2019 on the file of the Motor Accident Claims Tribunal/ Special District Judge, Krishnagiri, have come up with this appeal, seeking enhancement of compensation.

2. The facts in nutshell are:

i) The claimants are the legal heirs of the deceased Murugesan. According to them, on 31.05.2019 at 18.45 hours, the deceased was proceeding in a Honda Activa Two Wheeler bearing Registration No.TN-29-AS-0037 on Chennai-Krishnagiri



National Highways, and when he tried to cross the Chettipalli Koot Road, a Honda VZ i-VTEC Car bearing Registration No.TN-10-BF-4195 came in a high speed hit him. In the accident, he sustained fatal injuries and died on the spot.

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ii) It is their further case that the deceased was 44 years old at the time of the accident and he was earning Rs.45,000/- per month by doing Wood furniture work, Chit Funds and working as a Manager in a Petrol Bunk.

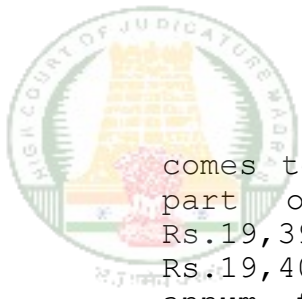
3. Though they have stated in the claim petition that the deceased was earning Rs.45,000/- per month, PW1, wife of the deceased, in her evidence had clearly admitted that no document was produced in support of the above submission. Hence, the Tribunal, by fixing Rs.9,000/- as notional income, assessed the Loss of Income as Rs.13,16,250/-. Then, by awarding amounts under various heads, arrived the compensation as Rs.15,46,250/-. Since the deceased had driven the motor-cycle without valid driving licence in a rash and negligent manner, the Tribunal fixed 20% as contributory negligence on the part of the deceased and awarded Rs.12,37,000/- as compensation to the claimants.

4. It is contended by the learned counsel appearing for the appellant that though PW1 had categorically stated in her evidence that her husband was doing various works and thereby earning Rs.45,000/- per month, the Tribunal had fixed notional income as Rs.9,000/-, which is very meagre.

5. Per contra, the learned counsel appearing for the second respondent Mr.S.Arunkumar would state that the Tribunal, after considering the evidence of PW1, had fixed the income as Rs.9,000/- and since there is no material to support the case of the claimants, the amount cannot be enhanced.

6. In the instant case, the accident had taken place in the year 2019. We have perused the evidence of PW1 and find that there is some force in the contention of the learned counsel appearing for the appellants. Hence, to meet the ends of the justice, it is proper to fix the income of the deceased as Rs.15,000/- per month and the annual income is Rs.1,80,000/- [15,000 x 12]. 1/4 is deducted towards personal expenses of the deceased, the contribution to the family would be Rs.1,35,000/- [1,80,000 - 45,000]. Considering the age of the deceased, if proper multiplier 13 is applied, the amount comes to Rs.17,55,000/-. 25% is added towards future prospects, then the Loss of dependency is assessed as Rs.21,93,750/- [17,55,000 + 4,38,750].

7. In addition to that, the amounts awarded by the Tribunal, viz., Rs.15,000/- towards Loss of Estate; Rs.15,000/- towards Funeral Expenses; and Rs.2,00,000/- towards Loss of Consortium, Filial Consortium and Parental Consortium, are confirmed. Thus, the total compensation amount



comes to Rs.24,23,750/-. Since 20% negligence is fixed on the part of the deceased, the claimants are entitled to Rs.19,39,000/- [24,23,750 - 4,84,750], which is rounded off to Rs.19,40,000/-. along with interest at the rate of 7.5% per annum from the date of claim petition till the date of realization. Thus, the total compensation payable to the claimants is re-calculated and tabulated below:

S.No.	Heads under which amount is awarded	Amount awarded by the Tribunal in Rs.	Amount awarded by this Court in Rs.
1.	Loss of Dependency	13,16,250	21,93,750
2.	Loss of Estate	15,000	15,000
3.	Funeral Expenses	15,000	15,000
4.	Loss of Consortium, Filial Consortium, Parental Consortium	2,00,000	2,00,000
	Total	15,46,250	24,23,750
	Less: 20% Negligence	3,09,250	4,84,750
	Total Compensation	12,37,000	19,39,000 rounded off to 19,40,000

8. The sum of Rs.12,37,700/- awarded by the Tribunal is enhanced to Rs.19,40,000/-. Out of the award amount, first claimant/wife of the deceased is entitled to Rs.9,40,000/-; claimants 2 and 3 each are entitled to Rs.3,00,000/-; claimants 4 and 5 each are entitled to Rs.2,00,000/-. The Insurance Company is directed to deposit the above enhanced award amount to the credit of the claim petition with proportionate 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. On such deposit, the claimants are permitted to withdraw their respective shares of the award amount as apportioned above, less the amount already withdrawn, if any, together with proportionate interest and costs.

9. With the above directions, the appeal is partly allowed. There shall be no order as to costs in the appeal.

Sd/-

Assistant Registrar

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pvs

To

The Special District Judge,
Motor Accident Claims Tribunal,
Krishnagiri.

+lcc to Mukund R.Pandiyan, Advocate SR. No. 21956

+lcc to S.Arunkumar, Advocate SR. No. 22329

C.M.A. No.2187 of 2021

RSV (CO)

PR (07/06/2022)