IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CMA No.2634 of 2021

1. Hemalatha
2. R.Baskaran
3. Minor B.Sushmitha

... Appellants/Petitioners

(Minor 3rd Appellant is rep.by next friend and father R.Baskaran the 2nd appellant herein)

Vs

1. N.Gopi

2. The Manager
Reliance General Insurance Company Limited.,
Office at Lakshmi Complex
1st Floor, Bharathi Street,
Omalur Main Road, Swarnapuri
Salem – 636 004.

... Respondents / Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the M.V. Act, against the Judgment and Decree dated 14.02.2020 in M.C.O.P.No. 324 of 2018 on the file of the Motor Accidents Claims Tribunal (Special District Judge), Salem.

For Appellants : Mr. R.Nalliyappan

For 1st Respondent : Mr. N.Dilli Babu

For 2nd Respondent : Mrs. C.Bhuvanasundari

J U D G M E N T

The Claimants, who are the parents and sister of the deceased B.Prabaharan, who died in a road accident that occurred on 30.12.2017, are on appeal terming award of Rs.11,86,680/- as meagre.

2. The appellants would seek enhancement. The deceased was 21 years old and he was pursuing B.Sc. Visual Communication at the time of the accident. It is also claimed that he was a very bright student with several extra curricular activities including athletics.

3. The factum of the accident, the death and the negligence on the part of the offending vehicle, namely, the Eicher Van are not in dispute since the Insurance Company has accepted the award. On the quantum, the Tribunal adopted the notional income of Rs.9,000/- per month, added 40% towards future prospectus and deducted ½ of the amount towards personal expenses, since the deceased was a bachelor, and arrived at the total loss of dependency adopting multiplier of '18' at Rs.13,60,800/-. The Tribunal deducted 15% towards contributory negligence as the deceased was not wearing helmet. Thus the Tribunal fixed the total loss of dependency at Rs.11,56,680/-. It also awarded Rs.15,000/- towards Loss of estate and Rs.15,000/- towards funeral expenses. Thus the total compensation was fixed at Rs.11,86,680/-.

4. Mr. R.Nalliyappan, learned counsel appearing for the appellants would vehemently contend that the fixation of Rs.9,000/- per month as income is too low. According to him, considering the fact that the deceased was pursuing graduation in Visual communication, the Tribunal should have taken the income at least at Rs.20,000/- per month as Visual Communication graduates are in great demand today because of the technological development.

5. Contending contra, Mrs. C.Bhuvanasundari, learned counsel appearing for the Insurance Company would submit that the certificates obtained by the deceased when he was in School and as such they cannot have any bearing on his earning capacity. She would also add that the deceased was only a student and therefore, the Court was right in fixing the monthly income of Rs.9,000/-.

6. I see considerable force in the submissions of the learned counsel for the appellants. The fixation of Rs.9,000/- as notional income for a undergraduate student during the year 2017, in my opinion, is far too less. As rightly pointed out by the learned counsel for the appellants, there is a huge demand for Visual communication graduates today because of the development of social media and other channels of communication. I am therefore of the opinion that the monthly notional income could be fixed at Rs.15,000/-. Adding 40% to it towards future prospectus, the total monthly income would be Rs.21,000/-. The annual income would be Rs.2,52,000/- since the deceased was a

bachelor if we deduct 50% towards personal expenses, the annual loss of dependency would be Rs.1,26,000/-. Since the deceased was only 21 years old, '18' should be adopted as multiplier and thus calculated the total loss of dependency would be Rs.22,68,000/-. If we are to deduct 15% towards contributory negligence, then the total loss of dependency would come to Rs.19,27,800/-.

7. As rightly pointed out by the learned counsel for the appellants, no amount has been awarded for love and affection and consortium. Considering the age of the parents and age of the deceased, I am of the opinion that a sum of Rs.80,000/- can be awarded towards loss of love and affection at Rs.40,000/- each. The award of Rs.15,000/- each towards loss of estate and funeral expenses is confirmed. Thus calculated the total compensation comes to Rs.20,37,800/-

8. In fine, the Appeal is partly allowed. No costs. The award is modified. The compensation award is enhanced to Rs.20,37,800/-. The Tribunal has apportioned the compensation awarded at Rs.6,86,680/- to the mother and Rs.2,50,000/- each to the father and sister.

9. I do not think that the sister should be paid any thing more what has been awarded by the Tribunal. Therefore, the enhanced compensation of RS.8,51,120/-along with accrued interest is directed to be shared between the claimants 1 and 2 equally. The Insurance Company is directed to deposit the enhanced compensation along with appropriate interest as awarded by the Tribunal within a period of six weeks from today. On such deposit, the appellants 1 and 2, namely, mother and father of the deceased are permitted to withdraw the entire amount deposited. The parties shall bear their costs in this appeal.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

vsg

To

1. The Special District Judge,
   The Motor Accident Claims Tribunal,
   Salem.

2. The Section Officer,
VR Section,
Madras High Court, Chennai.

+1cc to Mr. R.Nalliyappan, Advocate, S.R.No.1821

SPD[co]
NSK/30/06/2022