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CMA.No.3306 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22.04.2022

C O R A M :

The Hon'ble Mrs. Justice J. NISHA BANU

C.M.A.No.3306 of 2014

1.B.Yamuna

2.V.Prabhavathi

3.B.Moorthy

4.B.Bhuvaneswari

..Appellants/Claimants

Vs

1.V.Babu
No.1

..Respondent No.1/Respondent

2.The National Insurance

company ltd., No.225, Gandhi Road

Kanchipuram
No.2

..Respondent

No.2/Respondent

PRAYER : CMA filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree passed in decree dated 17.07.2014 made in MCOP.NO.169 of 2011 on the file of Motor Accident Claims Tribunal/District Judge, District Court – II, Kanchipuram.



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For Appellants : Mr.Y.Jyothish Chander
For Respondents : Mr.M.Krishnamurthy for R2.

R1- given up.

JUDGMENT

The appellants are the claimants. This appeal is filed praying for enhancement of compensation. The appellants are the wife, daughters and son of the deceased.

2. The appellants/claimants filed MCOP.No.169/2011 for the death of A.K.Balakrishnan, who died due to the injuries sustained in the accident which took place on 07.06..2004. They claimed compensation of Rs.10,00,000/- before the Tribunal.

3. Since the claimants are before this court seeking enhancement of compensation and not disputed the findings of the Tribunal as regards the manner of accident and liability, the same needs not be discussed or described in this appeal.



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4. The only challenge is as against the quantum of compensation awarded by the Tribunal. The Tribunal awarded Rs.4,00,000/- as compensation to the claimants, taking age of the deceased as 52 as per Ex.P.7-Post Mortem certificate, adopted multiplier 9 as per Sarla Verma Case. The Tribunal found that no document has been filed to prove the income of the deceased and so fixed Rs.4000/- as notional monthly income and calculated the loss of income to the claimants as under :-

$$\text{Rs.4000} \times 12 \times 9 \times \frac{2}{3} = \text{Rs.2,88,000/-}.$$

Further amounts Rs.12,000/- towards funeral expenses, Rs.75,000/- towards loss of love and affection; Rs.25,000/- towards loss of consortium, in total, Rs.4,00,000/- has been awarded to the claimants.

5. The learned counsel for the appellants would submit that the age of the deceased was 52 years, but the tribunal erred in taking as 55 years as per Post Mortem Certificate Ex.P.7 and further the deceased was earning not less than Rs.10,000/- per month in the real estate business.



But the tribunal has taken only Rs.4,000/- as income which is not at all reasonable. The learned counsel thus sought to fix reasonable compensation under the head “Pecuniary loss”.

6. In Sarla Verma case [*Sarla Verma Vs. Delhi Transport Corporation, 2009 (6) Scale 129*], it has been stated that in the case of those above 50 years, there shall be no addition. Having regard to the fact that in the case of those self-employed or on fixed wages, where there is normally no age of superannuation, this court is of the view that it will only be just and equitable to provide an addition of 10% so as to make the compensation just, equitable, fair and reasonable. The deceased has left behind four legal representatives and, therefore, the appropriate deduction towards personal expenses of the deceased according to the judgment of the Hon'ble Supreme Court in the case of Sarla Verma (supra) is $\frac{1}{4}$ th. Accordingly, now the “pecuniary loss” is calculated as under:-

$$\text{Rs.4000} \times 10\% \text{ (addition)} = \text{Rs.400/-}$$

$$4400 \times \frac{1}{4} \text{ (deduction)} = 1,100$$



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D) The second respondent-insurance company is directed to deposit the enhanced award amount along with interest within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit being made, the appellants/claimants are entitled to withdraw the same.

No costs.

22.04.2022

Index :Yes/No

Internet :Yes/No

mvs/nvsri

To

1. The District Judge, District Court – II, Kanchipuram

[Motor Accident Claims Tribunal]

2.The Section Officer, V.R.Section, High Court, Madras.



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J.NISHA BANU, J.

nvsri

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