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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.03.2022

CORAM

THE HON'BLE MRS.JUSTICE J.NISHA BANU

Civil Miscellaneous Appeal No.546 of 2014

1.Gangamma

2.Battala Subbarayudu

... Appellants/Petitioners

Vs.

1. R.Brindadevi

(Remained Ex-parte before the Trial Court)

2.Universal Sompo General Insurance Co.Ltd.,

Capitale Towers, 5th floor, 554 and 555

Anna Salai, Teynampet, Chennai-18

... Respondents

/Respondents

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the judgment and decree dated 30.10.2013 MACT.O.P.No.3102 of 2011 on the file of the Chief Small Causes Court (Motor Accidents Claims Tribunal), Chennai.

For Appellants : Mr.N.M.Muthurajan

For respondents : R1 exparte before the tribunal
Ms.Srividya for R2.

JUDGMENT

This appeal has been filed by the appellants/claimants for enhancement of compensation. The Tribunal passed an award in favour of the appellants/claimants against the second respondent for a sum of Rs.5,26,000/- together with interest at the rate of 7.5% from the date of the claim petition till the date of realization.

2. The case of the claimants before the Tribunal is that on 06.07.2011 at 08.00 hours, their son/the deceased was walking along Rajiv Garden Road, Thoraipakkam from east to west direction, at that time, the first respondent's lorry bearing Reg.No.TN-25-B-2634 was driven by its driver in a rash and negligent manner dashed the deceased from behind and so, he



sustained serious head injuries and died on the spot. The claimants filed claim petition in MCOP.No.3102 of 2011 and claimed a total compensation of Rs.12,00,000/- from the respondents.

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3. Denying the averments in the claim petition, the second respondent filed a counter denying the averments made by the claimants and stated that the quantum claimed by the petitioner as compensation is exorbitant and prayed for dismissal of the claim petition.

4. The Court below after considering the pleadings, oral and documentary evidence of both sides, awarded a sum of Rs.5,26,000/- under the following heads :

S.No.	Particulars	Amount in Rs.
1.	Loss of dependency	4,86,000/-
2.	Loss of love and affection	25,000/-
3.	Funeral expenses	10,000/-
4.	Transport expenses	5,000/-
	Total	5,26,000/-

Aggrieved over the same, the appellants/claimants have filed this appeal seeking enhancement of the compensation.

5. According to the learned counsel for the appellants, the deceased was a mason and was getting Rs.500/- per day at the time of accident. The accident is of the year 2011. But the tribunal fixed monthly income at Rs.4,500/- and not taken Rs.500/- per day as the income of the deceased as deposed by P.W.3 holding that there is no proof that P.W.3 worked with the deceased and the same is not correct. Further the Tribunal erred in not awarding any amount on the head of future prospects and the award passed by the Tribunal is not a just and reasonable compensation. Hence, prays to enhance the compensation.

6. The learned counsel for the 2nd respondent-Insurance company would submit that the Tribunal after considering both the oral and documentary evidence of both sides has awarded just compensation and hence, the well considered award of the Court below needs no interference.

7. Heard the learned counsel for the appellants and the learned counsel for the second respondent and perused the materials available on record.



8. On a perusal of the materials available on record, it is seen that the Tribunal on considering the nature of job performed by the deceased i.e., mason, pointed out that he would have not got the chance to work for all the 30 days in a month and in the absence of income proof, fixed Rs.4,500/- per month as notional income and further considering the relevant period of accident and that the deceased was a bachelor, the Tribunal deducted 50% towards the personal expenses and arrived at loss of dependency as follows:-

Rs.4,500/- - $\frac{1}{2} \times 12 \times 18 = \text{Rs.4,86,000/-}$.

9. According to the learned counsel for the appellants, the accident is of the year 2011 and at that time, mason was getting Rs.500/- per day. The learned counsel relied on the decision reported in 2019 (1) TN MAC 4 (DB) [Andal and others Vs. Avinav Kannan and others], wherein a Division Bench of this court fixed Rs.6,500/- as the notional income of the deceased who was working as a daily wager in the Butcher Shop.

10. In this connection, it is also relevant to look into the decision of the Supreme Court reported in (2014) 2 SCC 735 [Syed Sadiq and others Vs. Divisional Manager, United India Insurance Company Limited] wherein, the claimant is a vegetable vendor and sustained 85% functional disability in a motor accident and claimed compensation. The Supreme Court held that the claimant cannot be expected to produce documents to prove his monthly income and fixed his monthly income at Rs.6,500/-. Since the appellants are aggrieved only against the notional income fixed by the Tribunal, applying the above decision of the Honourable Supreme Court and this Court, it is appropriate to fix Rs.6,500/- per month as notional income of the deceased. There is no quarrel over the multiplier adopted by the Tribunal. Therefore, the same is confirmed.

11. Further, this court gives due consideration to the judgment of the Hon'ble Supreme Court reported in 2017 (2) TNMAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and others] wherein, it is held as follows:-

"59.4. In case the deceased was self-employed or on a fixed salary, an additional of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. "



12. Accordingly, 40% of the income is added as future prospects to the notional income of the deceased and the loss of dependency is arrived as below:-

Rs.6,500/- + 40% - $\frac{1}{2} \times 12 \times 18$ = Rs.9,82,800/-.

Insofar as the compensation granted under other heads are concerned, this court is of the view that the same are just and reasonable.

13. Considering all the above circumstances, the Award passed by the Tribunal is modified as follows:-

Sl. No.	Headings	Amount Awarded by the Tribunal Rs.	Amount awarded by this Court Rs.	Award confirmed or enhanced
1	Loss of dependency	4,86,000/-	9,82,800/-	enhanced
2	Loss of love and affection	25,000/-	25,000/-	confirmed
3	Funeral expenses	10,000/-	10,000/-	confirmed
4	Transport expenses	5,000/-	5,000/-	confirmed
	Total	5,26,000/-	10,22,800/-	enhanced

14. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.5,26,000/- is hereby enhanced to Rs.10,22,800/- (Rupees Ten lakhs twenty two thousand eight hundred only) together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The second respondent/ Insurance Company is directed to deposit the enhanced award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants are permitted to withdraw the enhanced award amount along with interest and costs as apportioned by the Tribunal. No costs.

Sd/-

Assistant Registrar(I)

// True Copy //

Sub Assistant Registrar

nvsri



To

1.The Chief Judge, Small Causes Court
Motor Accidents Claims Tribunal, Chennai.

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

+lcc to Mrs.R.Sreevidhya, Advocate SR.No.16362
+lcc to Mr.N.M.Muthurajan, Advocate SR.No.16376

C.M.A.No.546 of 2014

KK (CO)
CB(24/03/2022)