IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:12.10.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI
and
THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.M.A.No.3524 of 2021

1.M.Sangeetha
2.R.S.Priyadharshini (Minor)
3.R.S.Sharini (Minor)
4.R.Mallika

... Appellants/Petitioners

Vs.

1.M/s.Greenways Shipping Agencies Private Limited,
No.113, Armenian Street,
Chennai – 600 001
2.United India Insurance Company Limited,
Motor Third Party Claim Cell (HUB),
Silingi Buildings,
Chennai – 600 006.

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 15.03.2021 made in M.C.O.P.No.1191 of 2019, on the file of Motor Accident Claims Tribunal cum Learned Chief Judge, Small Causes Court, Chennai.

For Appellants : Mr.R.Ravichandran
for Mr.K.Prem Kumar

For Respondents :No Appearance for R1
Ms.R.Rathna Thara for R2

J U D G M E N T

(Judgment of the Court was delivered by S.SOUNTHAR,J.)

Aggrieved by the quantum of compensation awarded by the Motor Accidents Claims Tribunal in M.C.O.P.No.1191 of 2019, dated 15.03.2021, the claimants have come up with this appeal.

2. According to the appellants/claimants, the husband of the first appellant, father of the appellants 2 and 3 and son of 4th appellant namely, the deceased Ravikumar was riding his motorcycle on 03.11.2018 proceeding from south to north near Apparsamy Koil Street Junction. The Mahindra Truck bearing registration No.TN-04AM-8755 owned by the first respondent was driven by its driver in a rash and negligent manner and dashed against the right side handle bar of the deceased's motorcycle. As a result, the deceased was thrown out and died on the spot. The appellants laid

the motor accident claim in MCOP.No.1191 of 2019, on the file of the Motor Accident Claims Tribunal, Chennai, claiming compensation of Rs.1,50,00,000/-.

3. The respondents herein filed a separate counter denying the manner of accident, age, monthly income of the deceased and resisted the claim.

4. Before the Tribunal, the first appellant was examined as PW.1, the eye witness was examined as PW.2 and HR Manager of the deceased was examined as PW.3. The claimants marked Exs.P1 to P22 in support of the claim. The respondents have not examined any witness and no document was marked.

5. After considering the evidence available on record, the Tribunal awarded a sum of Rs.69,29,000/- as compensation. Not satisfied with the quantum of compensation, the claimants have come up with this appeal.

6. The learned counsel for the appellants submitted that the Tribunal erred in not taking into consideration the statement of account of deceased Ex.P5, the TDS statement Ex.P6 and income tax returns of the deceased for the assessment years 2017-2018, 2018-2019, 2019-2020, which were marked as Ex.P7 and salary certificate issued by the employer Ex.P19 etc., while fixing the income of the deceased. The learned counsel further submitted that the Tribunal erred in fixing only Rs.36,000/- as the monthly income of the deceased, whereas, admittedly the documentary evidence available on record calls for fixation of higher sum and hence, prayed for enhancement of compensation.

7. The learned counsel for the second respondent/Insurance Company submitted that the accident had occurred due to own negligence of the deceased as he failed to exercise reasonable care while driving the vehicle and hence, the Tribunal should have fixed at least 50% of the contributory negligence on the part of the deceased. The learned counsel further submitted that the income tax return filed subsequent to the accident cannot advance the

case of the claimants for claiming higher compensation and hence sought for dismissal of the appeal filed by the claimants.

8. Heard the arguments of both the sides and perused the materials available on records.

9. The Tribunal, after analysing the evidence of eye witness of PW.2, copy of the FIR, which was marked as Ex.P1, wherein the criminal case under Section 304 A of IPC filed against the driver of the first respondent's lorry, concluded that the accident had occurred only due to the rash and negligent driving of the first respondent. The Insurance Company has not filed any separate appeal and assailed the said findings. Therefore, in the appeal filed by the claimants seeking enhancement of the compensation, the second respondent cannot be heard to say that the finding of the Tribunal, with regard to the fixation of negligence wholly on the driver of the first respondent vehicle cannot be accepted.

10. As far as the quantum of compensation is concerned, the claimants filed Ex.P5-Bank statement of account of the deceased, wherein the credit of salary from January 2018 to October 2018 found place. Every month a sum of more than Rs.54,000/- had been credited to the account of the deceased towards salary. The average sum credited under the head salary comes around Rs.54,713/-. Ex.P6 is the Form-16 issued by the employer for the period 01.04.2017 to 31.03.2018 (date of accident 03.11.2018). The total salary amount paid to the deceased was shown as Rs.8,18,111/-. It also shows that a sum of Rs.68,890/- was deducted towards TDS. Hence, as per Ex.P6 monthly average salary would be Rs.68,175/-, under Ex.P7 the income tax returns of the deceased for the assessment years 2017-2018, 2018-2019 and 2019-2020 were filed. The income tax return for the assessment year 2019-2020 was filed subsequent to the date of accident, therefore the same is not taken into consideration. In the income tax return for the same assessment year 2017-2018 which was filed on 24.07.2020, the salary income was shown as Rs.7,54,594/-. Therefore, the average salary would be Rs.62,882/-. As per the income tax return for the assessment year 2018-2019, the income from salary was shown as Rs.8,18,111/-. Therefore, the average salary for that year

would be Rs.68,175/-. As per Ex.P19-salary certificate issued by employer of the deceased on 26.11.2018, the annual salary of deceased was Rs.8,92,960/-. If that document is taken into consideration, the average salary was Rs.74,413/-. The HR Manager of the deceased had been examined as PW.3 and Ex.P19 was marked through him. A close perusal of Ex.P19 shows that there are certain inadmissible components to the salary like conveyance allowance, variable pay. The conveyance allowance is personal in nature and the same cannot be taken into consideration for the purpose of calculating the loss of dependency. Likewise, the variable pay may change from time to time and the same cannot be taken into consideration. If the inadmissible portions of the salary are excluded, the loss of income to the family could be fixed at Rs.64,580/- by taking into consideration of the documents discussed above including the salary credit given to the deceased immediately preceding ten months from the date of accident and income tax returns, Form-16 etc. We find it appropriate to fix the monthly income of the deceased at Rs.60,000/- per month. In fact, the claimants claimed only Rs.60,973/- as monthly income of the deceased in the claim petition.

11. Considering the fact that the age of the deceased was 39 years at the time of accident, he is entitled to future prospects at the rate of 40%. In Ex.P19-salary certificate, it was mentioned that he had been working from 1st March 2007 in ITC Limited, therefore, after adding the future prospects as 40%, the monthly income of the deceased would be Rs.84,000/- per month. Therefore, the loss of dependency, after deducting 1/4th of the amount towards his personal expenses would be (Rs.84,000x12x3/4x15=1,13,40,000/-).

12. In addition to the above said amount, the claimants are entitled to funeral expenses at the rate of Rs.15,000/-. The first appellant is entitled to loss of consortium of Rs.40,000/- as against Rs.30,000/- awarded by the Tribunal. The appellants 2 and 3 are entitled to Rs.40,000/- (each) towards loss of love and affection. The 4th appellant is entitled to a sum of Rs.40,000/- towards loss of parental consortium.

13. The total compensation payable to the appellant is as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Loss of dependency	68,04,000/-	1,13,40,000/-	Enhanced
2.	Funeral expenses	15,000/-	15,000/-	Confirmed
3.	Loss of consortium	30,000/-	40,000/-	Enhanced
4.	Loss of love and affection	80,000/-	80,000/-	Confirmed
5.	Loss of parental consortium	-	40,000/-	Enhanced
	Total	69,29,000/-	1,15,15,000/-	Enhanced by Rs.45,86,000/-

14. In the result,

(i) the Civil Miscellaneous Appeal is allowed by enhancing the compensation payable to the appellants to Rs.1,15,15,000/- from Rs.69,29,000/-.

(ii) The second respondent/Insurance Company is directed to deposit the enhanced compensation within a period of eight weeks from the date of receipt of a copy of this order together with interest at the rate 7.5% from the date of petition to the date of deposit;

(iii) The first appellant is entitled to compensation of Rs.35,15,000/-, the 2nd and 3rd appellants are entitled to a sum of Rs.30,00,000/- (each), the 4th appellant is entitled to a sum of Rs.20,00,000/-.

(iv) The first and 4th appellant are entitled to withdraw their share of compensation on deposit of award amount by the Insurance Company;

(v) The share of minor appellants 2 and 3 shall be deposited in anyone of the nationalized bank initially for the period of one year and the same shall be renewed periodically;

(vi) The first appellant, guardian of the minor appellants 2 and 3, is permitted to withdraw the accrued interest, on minor share once in three months for the benefit of the minors.;

(vii) The learned counsel appearing for the appellants is directed to pay the necessary Court Fee on the enhanced compensation, if any;

(viii) The minor appellants 2 and 3 are permitted to withdraw their share of the award amount on attaining majority by satisfying the Tribunal as to the fact of their attaining majority. No costs.

(V.M.V., J) (S.S., J)

12.10.2022

Internet : Yes / No
Index : Yes / No
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To
1.The Chief Judge, Small Causes Court, Chennai.

2.The Section Officer
VR Section
High Court
Madras.

V.M.VELUMANI,J.

and
S.SOUNTHAR,J.
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