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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.03.2022

CORAM

THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

C.M.A.NO.2588 OF 2017

1. Chinnathambi

2. Lakshmi

... Appellants/Petitioner

.Vs.

1. V.C.Shanmugam

2. The National Insurance Company Ltd.,
Rep. by its Branch Manager
88-F, Bye-pass Road,
Dharmapuri.

... Respondents/Respondents

PRAYER:-

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Award and decree passed in M.C.O.P.No.251 of 2006, dated 05.04.2007, on the file of the Motor Accidents Claims Tribunal, Dharmapuri District at Krishnagiri (Chief Judicial Magistrate Court No.2).

For Appellants : Mr.V.Kumaravelan

For R2 : M/s.R.Sreevidya

JUDGMENT

The claimants/parents of the deceased, Thangaraj who was aged about 15 years at the time of an accident, that took place on 29.12.2004, aggrieved by the grant of compensation in M.C.O.P.No.251 of 2006, dated 05.04.2007 by the Chief Judicial Magistrate Court No.2, Krishnagiri, have filed the present Civil Miscellaneous Appeal.

2. Thangaraj, who was studying 9th Standard in the Government Higher Secondary School, Pochampalli in Krishnagiri District, was riding a TVS 50 XL moped bearing Registration



No.TN 29-V-1468 on 29.12.2004 from Kottavoor Village to Pochampalli Village. At around 2.00 p.m, when he was near to the Srinivasa Saw Mill, a bus bearing Registration No.TN-63-L-6667 belonging to the first respondent in the Claims Petition, was driven in a rash and negligent manner came in the opposite direction and dashed against the TVS 50 XL moped driven by Thangaraj. Thangaraj was taken to Government Hospital, Krishnagiri, by an ambulance, but he died on the way to the hospital. Claiming that the said accident had occurred only due to the negligence of the driver of the bus, the parents had filed a claim petition before the Motor Accident Claims Tribunal at Krishnagiri/Chief Judicial No.II, Krishnagiri, claiming compensation of Rs.4,00,000/-.

3. The second respondent in the said MCOP No.251 of 2006 was the insurer of the bus. The Tribunal, in its Judgment dated 05.04.2007, had examined the evidence adduced viz., oral evidence of P.W.1 and also the documents Ex.P1 to Ex.P4. Ex.P4 was the copy of the insurance policy and Ex.P1 was copy of the First Information Report. The Tribunal found that the accident had occurred due to the negligence of the driver of the bus bearing registration No.TN-63-L-6667 and also found that no negligence can be attributed to Thangaraj and therefore, stated that the insurer of the bus will have to pay the compensation. I would confirm that finding.

4. Thereafter, the Tribunal had proceeded to determine the quantum. The Tribunal had fixed the Notional Income of the deceased at Rs.15,000/- per year, deducted 1/3rd towards personal expenses and arrived at a sum of Rs.10,000/- as the annual income of the deceased, applied multiplier '15' and awarded a total compensation of Rs.1,50,000/- under the head loss of income. Towards other conventional heads like funeral expenses, loss of love and affection, loss towards the damage of clothes and towards transportation charges, a further amount of Rs.8,000/- was granted and a total amount of Rs.1,58,000/- was granted by the Tribunal. Questioning that particular award, the present appeal has been filed.

5. Heard Mr.V.Kumaravelan, learned counsel appearing for the appellant and Ms.R.Sreevidhya, learned counsel appearing for the second respondent.

6. I must appreciate that the learned counsel appearing for the second respondent who has forwarded a Judgment of Hon'ble Supreme Court in the case of Kishan Gopal & Anr Vs. Lala & others reported in 2014 1 SCC (Civil) 184. In that particular judgment, the deceased was also between the ages of 5 and 10. The Hon'ble Supreme Court had taken the annual Notional Income at Rs.30,000/- and had also upheld the principles as laid down



in the case of Sarla Verma Vs. Delhi Transport Corporation reported in 2009 (6) SCC 121 especially adoption of multiplier of 15. The total loss of income had been arrived at Rs.30,000/- X 15 = 4,50,000/-. The Hon'ble Supreme Court has also granted a total sum of Rs.50,000/- towards conventional heads like loss of love and affection, funeral expenses as held in the case of Kerala SRTC Vs. Susamma Thomas reported in 1994 (2) SCC 176.

7. Adopting the very same principles as laid down in the aforesaid judgment, I would also interfere with the judgment of the Tribunal and determine the annual Notional Income at Rs.30,000/- and adopt the multiplier of 15, which would indicate the total of income at Rs.4,50,000/- and also grant an additional amount of Rs.50,000/- towards the conventional expenses like loss of love and affection, funeral expenses and transportation charges. The total compensation granted now is at Rs.5,00,000/-.

8. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.1,58,000/- is hereby enhanced to Rs.5,00,000/- [Rupees Five Lakhs only] together with interest at the rate of 7.5% per annum from the date of the appeal till the date of deposit. The 2nd respondent/Insurance Company is directed to deposit the 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 to the credit of M.C.O.P.No.251 of 2006, on the file of the Motor Accidents Claims Tribunal, Dharmapuri District, Krishnagiri. On such deposit, the appellants are permitted to withdraw the amount, now awarded by this Court as per the apportionment fixed by the Tribunal, along with proportionate interest and costs, as awarded by the Tribunal less the amount if any, already withdrawn by making necessary applications before the Tribunal. Since, this Court had enhanced the compensation, the appellants/claimants are directed to pay necessary Court fee, if any, on the enhanced compensation. It is made clear that the appellants are not entitled to any interest for the delay period as per the order of this Court dated 28.07.2017 made in M.P.No.1 of 2007 in C.M.A.SR.No.73293 of 2007. There shall be no order as to costs in the present appeal.

Sd/-

Assistant Registrar(CS I)

//True Copy//

Sub Assistant Registrar

mp/rap



To

1. The Chief Judicial Magistrate Court No.2,
The Motor Accidents Claims Tribunal,
Dharmapuri District at Krishnagiri.

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

+1cc to Mr.V.Kumaravelan, Advocate, S.R.No.16599

+1cc to Mr.R.Ravichandran, Advocate, S.R.No.16779

C.M.A.NO.2588 OF 2017

GSM(CO)
PBS/14/06/2022