BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 12.12.2022

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THE HONOURABLE MRS.JUSTICE **N.MALA**

C.M.A(MD)No.1042 of 2022

1.M.Shanthi

2.M.Kabileshkumar ... Appellants/ Claimants.

Vs

1.T.Corban Singh

2.The Deputy Manager,
M/s.The New India Assurance Co.Ltd.,
Madurai Regional Officer,
CMTS Bhavan, 70 Feet Road,
Ellis Nagar,
Madurai – 625 001.

...Respondents 1&2/Respondents 1&2

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, to call for the records relating to the judgment and decree dated 14.03.2019 in M.C.O.P.No.381 of 2017, on the file of the Motor Accident Claims Tribunal cum Special District Judge (MCOP Cases), Madurai, and to set aside the same, consequently, enhance the compensation.

For Appellants : Mr.K.Subramanian

For R1 : Mr.K.Samidurai

For R2 : Mr.A.Elango

JUDGMENT

The Civil Miscellaneous Appeal is filed challenging the order passed by the learned the Motor Accident Claims Tribunal cum Special District Judge (MCOP Cases), Madurai, in M.C.O.P.No.381 of 2017, dated 14.03.2019.

2.The claimants are the appellants in the appeal. The appeal is filed challenging the award of the tribunal in-deducting 15% of the compensation amount towards contributory negligence of the deceased and also for enhancement of compensation.

3.The deceased was 55 years at the time of accident. He was running a coffee stall at Madurai – Theni Main Road. Whileso, on 01.01.2017, at about 04.45 a.m, when the deceased was walking from East to West direction on the extreme left side of the road to open the coffee shop, nearing Thangamuneeswarar Temple, a Car bearing Reg.No.TN-59-AQ-6466 belonging to the first respondent came in the opposite direction, at a high speed in a rash and negligent manner, without sounding horn and dashed against the deceased. As a result, the deceased was thrown away and sustained multiple injuries on head and all over the body. He was pronounced dead on arrival at the Government Rajaji Hospital, Madurai, therefore the legal heirs of the deceased filed the claim petition seeking compensation of Rs.16,00,000/-.

4.The owner of the said Car remained *ex-parte* before the Tribunal, and therefore, the second respondent/ Insurance Company contested the claim petition. The second respondent filed a counter denying all the averments in the claim petition.

5.Before the Tribunal, on the side of the appellants/claimants, PW1 & PW2 were examined and exhibits P1 to P9 were marked. On behalf of the Insurance company, no exhibit were marked nor witness was examined.

6.The Tribunal based upon the oral and documentary evidence, awarded a sum of Rs.5,98,400/- together with interest at the rate of 7.5 % per annum and directed the respondents to pay the compensation jointly and severally to the claimants.

7.Not satisfied with the quantum of compensation awarded by the Tribunal and challenging deduction of 15% towards contributory negligence, the claimants have preferred this appeal under Section 173 of the Motor Vehicles Act, 1988.

8.According to the learned counsel for the appellants, the tribunal had fixed the monthly income at Rs.7,500/-, which is on the lower side considering that the deceased was earning more than Rs.20,000/- per month by running a Coffee Shop and mini Tiffin Centre and to prove that, the Professional Tax was marked as Ex.P.6.

9.The learned counsel for the second respondent on the other hand submitted that the deceased was a pedestrian and that the tribunal from the manner of the accident rightly held that the deceased contributed to the accident and therefore, deducted 15% of compensation amount towards contributory negligence of the deceased.

10.On the issue of quantum, the learned counsel submitted that in the absence of any evidence on the side of the claimants, the Tribunal had rightly taken the monthly income at Rs.7,500/- and calculated the total compensation at Rs.5,98,400/-.

11.Heard both sides and perused the materials placed on record.

12.It is an admitted fact that the deceased was a pedestrian. The Tribunal, erroneously placed the burden on the claimants for its findings on contributory negligence. The Tribunal wrongly placed the burden on the claimants and drew adverse inference against the claimants on negligence and deducted 15% of compensation amount towards contributory negligence of the deceased. The findings of the Tribunal on the issue of negligence is erroneous. As the plea of contributory negligence was taken by the respondent/Insurance Company, the burden was on the second respondent/Insurance Company to prove by documentary and other evidence the plea of contributory negligence. In this case, absolutely no evidence either oral or documentary was filed by the Insurance Company in support of the plea of contributory negligence.

13.In the absence of any evidence by the second respondent/Insurance Company on the contributory negligence of the deceased I am of the view that the findings of the Tribunal on the issue of contributory negligence is unsustainable. The Tribunal therefore was not justified in deducting 15% of the compensation amount towards contributory negligence.

14.The learned counsel for the appellants/claimants relied upon the judgment of the Hon'ble Division Bench of this Court, in the case of **Andal Vs Avinav Kanan** reported in **2019 (1) TN MAC 54 (DB)** in support of his submission that the notional income fixed by the Tribunal is very much on the lower side.

15.It is seen that the deceased was running a coffee shop. To prove the same, the Professional Tax Receipt is marked as Ex.P.6. In the said judgment **Andal Vs Avinav Kanan** (cited supra)**,** the Hon'ble Division Bench of this Court considered the Cost of Inflation Index and reworked the notional income fixed by the Hon'ble Supreme Court in the year 2007 – 2008. The Hon'ble Division Bench relying on the CBDT notification dated 13.06.2008, on the Cost of Inflation Index, held that the notional income fixed by the Hon'ble Supreme Court for the year 2007 - 2008, could be re-worked on the basis of the Cost of Inflation Index. In the Judgment of the Hon'ble Division Bench of this Court, the Cost of Inflation Index for the year 2017- 2018 is 272. By applying the same, the monthly income of the deceased in the present case is worked out as under:-

6500 x 272/129 = Rs.13,705/- and the same is rounded off to Rs.13,700/-.

16.After applying Inflation Index, the notional income of the deceased is fixed at Rs.13,700/-. The tribunal awarded 10% increase towards future prospects. Therefore, the monthly income works out to Rs.15,070/- (Rs.13700 + 1370). Since, the deceased was married and had a child, 1/3rd of the income is deducted towards deceased's personal expenses and therefore, the deceased's contribution to his family is fixed at Rs.10,047/-. The loss of dependency per month works out to Rs.10,047/-. The age of the deceased was 55 years. As per the judgement of the Hon'ble Supreme Court in **Sarala Verma's Case,** the appropriate multiplier is 9. Therefore, the total loss of income works out to Rs.10,85,076/- (Rs.10,047 x 12 x 9).

17.The Tribunal awarded a sum of Rs.40,000/- towards loss of consortium to the first claimant, Rs.40,000/- towards loss of love and affection to the second claimant, Rs.15,000/- towards funeral expenses and Rs.15,000/- towards Transport expenses, which are all reasonable and the same are confirmed.

18. Accordingly, the award of the Tribunal in M.C.O.P.No.381 of 2017 is modified as follows:-

Sl. No.	***Particulars***	***Amount granted by the Tribunal***	***Amount granted by this Court***
1	Loss of dependency	Rs.5,94,000/-	**Rs.10,85,076/-**
2.	Loss of Consortium to the first appellant	Rs.40,000/-	Rs.40,000/-
3.	Loss of love and affection to the second appellant	Rs.40,000 /-	Rs.40,000 /-
4.	Funeral Expenses	Rs.15,000/-	Rs.15,000/-
5.	Transport Expenses	Rs.15,000/-	Rs.15,000/-
	Total	Rs.7,04,000/-	
	15% deduction towards contributory negligence	Rs.1,05,600	....
	Total	Rs.5,98,400/-	Rs.11,95,076/-

19.In the result, this Civil Miscellaneous Appeal is partly allowed. The quantum of compensation awarded by the Tribunal is enhanced from Rs.5,98,400/- to Rs.11,95,076/- which shall carry interest at the rate of 7.5% per annum.

20.The second respondent /The New India Assurance Company Limited is directed to deposit the entire compensation of Rs.11,95,076/- (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No. 381 of 2017 on the file of the Motor Accident Claims Tribunal cum Special District Judge (MCOP Cases), Madurai, within a period of eight weeks from the date of receipt of a copy of this order.

21.On such deposit being made by the Insurance Company, the appellants herein are at liberty to withdraw the same after following due process of law. No costs.

12.12.2022

Index : Yes / No
Internet : Yes / No

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To

1.The Motor Accident Claims Tribunal cum Special District Judge
(MCOP Cases), Madurai.

2.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.

N.MALA, J

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