IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :21.07.2023

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THE HON'BLE MR. JUSTICE P.VELMURUGAN

C.M.A.No.1064 of 2018

1. Zareena

2. Aman Sherif ... Appellants

Vs.

1. Latha,
   (R1 set exparte in Trial Court
   Hence, notice may be dispensed with
   in this Appeal)

2. The Reliance General Insurance Co.Ltd.,
   Reliance Towers,
   Shasthri Bhavan Road,
   Nungambakkam,
   Chennai. 02. ... Respondents

PRAYER:

Civil Miscellaneous Appeal filed under Section 173 of M.V.Act 1988, against the judgment and Decree of the learned Motor Accidents Claims Tribunal (A.D.J-IV) Ponneri made in M.C.O.P.No.481 of 2014 dated 28.11.2017.

For Appellants : Mr.F.Terry Chella Raja

For R1 : Set Exparte before the Tribunal

For R2 : Mr.S.Arun Kumar

JUDGEMENT

This Civil Miscellaneous Petition has been filed against the award dated 28.11.2017 passed in M.C.O.P.No.481 of 2014 on the file of the learned IV Additional District Court, Motor Accidents Claims Tribunal, Ponneri.

2. The appellants herein are the claimants who filed the claim petition in M.C.O.P.No.481 of 2014 on the file of the Motor Accidents Claims Tribunal, Ponneri against the respondents herein.

3. The accident is not in dispute. The liability is also not in dispute. The only dispute is with regard to the quantum of compensation alone. Since the Tribunal has come to the conclusion that there is no dispute regarding the accident, claim and liability, fixed the liability on

the respondents. The offending vehicle was insured with the second respondent/Insurance Company. Since the Insurance Company has not filed any appeal or cross objection, this Court need not go into the facts regarding the liability of the Insurer.

4. The only question to be answered is the quantum fixed by the Tribunal reflects the "just compensation" or not.

5. In this regard, learned counsel for the appellants submitted that at the time of accident, the age of the deceased was four years. The Tribunal has fixed the notional income at Rs.15,000/- per annum, since the deceased was a child and non-earning member. As per the II schedule of the Motor Vehicles Act, for non-earning member, Rs.40,000/- has to be fixed for annual income, whereas, the Tribunal has fixed Rs.15,000/- per annum. The Tribunal after fixing an amount of Rs.15,000/- per annum, deducted 1/3rd of the income for personal expenses. Since the deceased was 4 years old at the time of accident, the Tribunal adopted the multiplier "15" and awarded Rs.1,50,000/- towards

loss of dependency, which does not reflect the just compensation. Hence, the present Civil Miscellaneous Appeal. The Tribunal ought to have fixed maximum amount of Rs.40,000/- as notional income of the non-earning member, the deceased herein. Therefore, the order passed by the Tribunal warrants interference.

6. The learned counsel for the second respondent/Insurance Company was not in position to justify the reasons given by the Tribunal for deducting 1/3rd of the income for personal expenditure, since the income itself is the notional income fixed by the Tribunal. Therefore, it is contended by the learned counsel for the second respondent/Insurance Company that the award passed by the Tribunal is proper and prayed for dismissal of the appeal.

7. Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the second respondent and perused the entire materials on record.

8. Admittedly the accident took place on 25.04.2014 at about 2.30 pm. The offending vehicle bearing Registration No.TN22-CH-8164 was insured with the second respondent/Insurance company. The driver of the said vehicle drove the vehicle in a rash and negligent manner and dashed behind the bicycle, in which, the deceased was riding, due to which, the deceased sustained injuries and subsequently succumbed to injuries. The parents of the child have filed the claim petition before the Tribunal. The Tribunal has fixed the liability on both the respondents, which is not in dispute. The only grievance of the appellants is that the quantum fixed by the Tribunal which does not reflect the "just compensation".

9. On a perusal of the records, it is found that the deceased was a 4 year child at the time of accident. The claimants are the parents of the deceased child. The Tribunal has fixed Rs.15,000/- per annum as notional income under the head of non-earning member and also adopted the multiplier "15". The Tribunal has deducted $1/3^{rd}$ of the annual come for the personal expenses.

10. The appellate Court is the final court of fact findings and it has to re-appreciate the entire evidence and give independent finding. Admittedly, the deceased was a four year old child at the time of accident. Though the learned counsel for the appellants vehemently contended that maximum limit for annual income for non-earning member is Rs.40,000/-, the Tribunal could have appreciated the same and could have given the benefit of the same by fixing the upper limit of Rs.40,000/-. This Court does not accept the contention of the learned counsel for the appellants. Though the child falls under the head of "non-earning member", however there is no clear picture that all the non-earning members are entitled to get the upper limit of Rs.40,000/-. As per II Schedule of the Motor Vehicles Act, the income of the non-earning member starts from Rs.3,000/- and ends with Rs.40,000/-.

11. If at all the contention of the learned counsel for the appellants is admitted, various income ceilings can be made in the said head and it is for the Tribunal to appreciate it, depending upon the age and capacity. Therefore, it is only a guideline , which is not mandatory. However, the

Tribunal has fixed the notional income at Rs.15,000/- per annum by considering the age of the deceased. The Tribunal has not given any valid reason as to on what ground, 1/3rd was deducted for the personal expenses. If the income itself has been fixed notionally for non-earning member, there is no question of deduction for the personal expenses. In this case, the actual income has not been fixed. The deceased child will have no personal expenses and depending upon the circumstances and also the number of dependency, there is no question of actual income for the purpose of fixing the notional income. Therefore, under these circumstances, deduction of 1/3rd of the annual income for the personal expenses is not sustainable. This Court sets aside the deduction of personal expenses alone. Considering the fact that the deceased was a child, not an earning member and though the Tribunal has fixed the notional income at Rs.15,000/- per annum, as already held, deduction of personal expenses does not arise in this case.

12. Thus, this Court is inclined to modify the compensation granted by the Tribunal as detailed hereunder:

Heads	***Amount awarded by the Tribunal (Rs.)***	***Award Amount by this Court (Rs.)***
Loss of dependency	Rs.10,000/- x 15= Rs.1,50,000/-	Rs.15,000/- x 15= Rs.2, 25,000/-
Non-pecuniary damages	Rs.50,000/-	Rs.50,000/-
Total	Rs.2,00,000/-	Rs.2,75,000/-

In other respects, the impugned Award of the Tribunal is confirmed.

13. In the result,

(i) This appeal is partly allowed and the compensation awarded by the Tribunal is enhanced from Rs.2,00,000/- to Rs.2,75,000/- with interest at the rate of 7.5% p.a. from the date of claim petition till the date of realisation.

(ii) The 2nd respondent/Insurance Company is directed to deposit the modified award amount i.e, Rs.2,75,000 /- along with interest at the rate of 7.5% per annum and costs as awarded by the Tribunal from the date of claim petition till the date of deposit, after deducting the amount already deposited, if any, to the credit of MCOP.No.481 of 2014 within a period of six weeks from the date of receipt of a copy of this Judgment.

(iii) On such deposit being made, the Tribunal is directed to transfer the respective shares of the award amount as per the ratio apportioned by the Tribunal to the Bank accounts of the appellants/ /claimants along with accrued interest, through NEFT/ RTGS within a period of two weeks thereafter.

(iv) The appellants/claimants are directed to pay the necessary court fee, if any for the enhanced compensation and the Registry is directed to draft the decree, after receipt of necessary court fee.

(v) There shall be no order as to costs in this appeal.

(vi) Consequently, connected miscellaneous petition is closed.

21.07.2023

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To

The IV Additional District Judge,
Motor Accident Claims Tribunal,
Ponneri.

P.VELMURUGAN, J.

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