IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 06.07.2023

PRONOUNVED ON:13.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

C.M.A.No.2227 of 2016

1.S.Sumathi
2.S.Narmadha
3.S.Sindhu ... Appellants

Versus

1.Kaviyarasu
2.B.Mylambigai

3.United India Insurance Company Ltd.,
Branch Office,
Giriram Complex,
Sathy Main Road,
Gobi … Respondents

Prayer: Civil Miscellaneous Appeal filed under 173 of Motor Vehciles Act to set aside the decree and judgement dated 21.12.2015 made in MCOP.No.400 of 2013, on the file of the Motor Vehicles Claims Tribunal-cum-Special District Court, Erode.

For Appellants : Mr.P.P.Shanmugasundaram

For R3 : Mr.D.Bhaskaran

JUDGMENT

This Civil Miscellaneous Appeal is filed challenging the awarded in MCOP.No.400 of 2013, on the file of the Motor Vehicles Claims Tribunal-cum-Special District Court, Erode.

2. The parties are referred to hereunder according to the status and ranking before the Tribunal.

On 04.02.2013, at about 08.45 a.m., the deceased was riding his Hero Honda Motorcycle bearing Registration.No.TN 33 AM 0729 near the TASMAC wine shop near Sampath Nagar diversion on Nasiyanur to Erode main road from west to east. At that time the mini bus namely Sri Pathi bearing Registration No.TN 33 AQ 2121 driven by the first respondent in a rash and negligent manner in the same direction and dashed upon the motorcycle, due to which the deceased got under the wheel of the mini bus, then dragged him to some distance on the road and sustained fatal head injuries all over his body. Immediately he was taken to Government Hospital, Erode and the Doctors examined him and declared as died. For the death of deceased the claimants, who are the wife and two daughters have filed claim petition seeking compensation for a sum of Rs.65,00,000/- under Section 166 of Motor Vehicles Act.

3. Before the Tribunal, the first respondent and the second respondent who are the driver and owner of the mini bus remained ex-parte and have not contested the case.

4. The third respondent has filed counter and denied the age, income of the deceased and the manner in which the accident has taken place. It is further contended that the deceased drove the motorcycle carelessly and suddenly without giving any signal crossed the road which resulted in accident, hence he alone was responsible for the accident, he was not having valid driving license at the time of accident and Hero Honda motorcycle was not insured, hence the respondent is not liable to pay the compensation and prays to dismiss the claim petition.

5. Before the Tribunal on the side of the claimants, the first claimant was examined as P.W.1, one Junior Advocate was examined as P.W.2, the Auditor of the deceased was examined as P.W.3 and the President of Erode Bar Association was examined as P.W.4 and Exs.P1 to P27 were marked. On the side of the third respondent/Insurance Company, there is neither oral evidence nor documentary evidence.

6. Based on the evidence placed on record, the Tribunal in point No.1 has held that the accident took place only due to the rash and negligent driving of the Mini bus by the first respondent. In Poin No.2 , the Tribunal has held that on behalf of the first and second respondents, third respondent is liable to pay compensation the claimants. In Point No.3, Tribunal has quantified the compensation and awarded a sum of Rs.14,52,780/- as compensation. Aggrieved over the compensation, claimants have preferred this Civil Miscellaneous Appeal.

7. The learned counsel for the appellants/claimants submits that the deceased in this case was practising Advocate and Notary public and earning a sum of Rs.50,000/- but the Tribunal has fixed the notional income

only at Rs.20,000/- per month which is on the lower side. Learned counsel also relied on the judgment of this Court in CMA.No.399 and 705 of 2017 dated 15.03.2017 wherein this Court has fixed the notional income of Advocate who was aged about 38 years as Rs.30,000/- per month and the Tribunal has not properly appreciated the income tax returns and other documents filed in support to prove the income of the deceased. The Tribunal has not awarded future prospects and the compensation awarded under other heads are also on the lower side. Hence, prays to enhance the same.

8. Per Contra, the learned counsel for the Insurance Company would submit that the Tribunal based on the evidence placed on record more particularly the income tax returns and other documents, fixed the income of the deceased notionally as Rs.20,000/- per month and the same is proper and opposed to enhance the compensation.

9. I have considered the submissions made by both sides and perused the records.

10.To prove the income of the deceased before the Tribunal, the claimants have marked income tax returns which is marked as Ex.P26 and also examined the Auditor/PW3 who has filed the income tax returns on behalf of the deceased. Ex.P20 is the income tax returns filed on behalf of the deceased for the assessment year 2009 to 2010. On a perusal of the same, it shows for the assessment year 2009-2010 gross total income of the deceased shown as Rs.2,28,193/- subject to deduction for running professional office and the taxable income is only Rs.1,73,790/- for the assessment year 2009-2010. Apart from that the other documents relied on by the claimant is statement of account prepared for the period from 01.01.2011 to 01.04.2012 and Ex.P16 is statement of account prepared for the period from 11.01.2011 to 15.03.2013 and Ex.P18 is statement of account prepared for the period from 01.01.2008 to 12.02.2013 and the above statements of Accounts of the deceased were also considered by the Tribunal along with income tax returns and found that those documents are not sufficient to fix the income of the deceased since, those documents are not clearly giving any evidence what was the exact income of the deceased. The evidence of PW3 is also shows that he was asked to prepare income tax returns for 2012-2013, but before filing of the same, the deceased was met with an accident and died. On perusal of such statements, it shows that the statements itself prepared after the death of deceased and it is also elicited from PW3 that these statements is not giving any specific details relating monthly income earned by the deceased. However it is admitted fact that the deceased was a practising Advocate and also a Notary Public. Deceased was aged about 52 years at the time of accident and the Tribunal has fixed Rs.20,000/- per month as notional income. This Court has held that absence of production of income tax returns for the period which is prior to date of accident income cannot be determined as a matter of routine on the basis of certificates issued by any person. In this case, there is no income tax returns produced before the Tribunal for the period prior to the date of accident. Hence, the Tribunal has rightly rejected the evidence of PW3 with regard to the income of the deceased. Ex.P.20 the income tax returns for the assessment year 2009 to 2010 shows that five years prior to the accident the deceased was earning income of Rs.2,24,852/- and after deductions, the taxable income is Rs.1,77,790/- which shows that for the financial year 2008-09 he was earning Rs.1,73,790/-. Hence, this Court is of the view that subsequent to five year there will be increase in the income earned by the deceased and as per decision of the Division Bench of this Court has fixing notional income as Rs.30,000/- per month to the deceased would be appropriate. Accordingly, this Court fixes notional income of the deceased herein as Rs.30,000/- per month and the claimant is aged about 56 years at the time of accident, hence claimants is entitled for 10% future prospectus, Loss of consortium is enhanced to Rs.40,000/- each, Funeral Expenditure is modified to Rs.15,000/- and this Court awards Rs.15,000/- under the head loss of estate. Loss of income is derived as follows:

Notional Income	: Rs.30,000/-
Future Prospects	: 10% (Rs.3,000/-)
Monthly Income	: 30000 + 3000= RS.33,000/-
Annual Income	: 33000 x 12=3,96,000/-
Upto 1,80,000/-	: Nil Tax
From 1,80,001 to % 5,00,000/-	: 10% to be deducted
	= 3,96,000 – 1,80,000=Rs,2,16,000/-
10% of 2,16,000	: Rs.21,600/-
IT CESS	: 3% of 21,600 =648
Professional Tax	: 2400
1/3rd deduction towards personal personal expenses	: Rs.1,32,000/-

Loss of Income = 3,90,000 – [1,32,000 + 21600 + 648 + 2400]

Loss of Income = 3,96,000 – 1,56,648

Loss of Income = 2,39,352 x 9

Loss of Income = Rs.21,54,168/-

The compensation under the other heads are just, fair and reasonable and the same is confirmed.

11. In the light of the above discussion, the award of the Claims Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1	Loss of consortium	25,000/-	1,20,000/-	Confirmed
2	Funeral expenditure	25,000/-	15,000/-	Reduced
3	Loss of love and affection	30,000/-	30,000/-	Confirmed
4	Transportation	10,000/-	10,000/-	Confirmed
5	Loss of Income	13,62,780/-	21,54,168/-	Enhanced
6	Loss of Estate	-	15,000/-	Granted
	Total	**Rs.14,52,780/-,**	**Rs.23,29,168/-**	**Enhanced by Rs.8,76,388/-**

12. In the result:

(i) The Civil Miscellaneous Appeal is partly allowed.

(ii) The claimants are awarded a sum of Rs.23,29,168/- The third respondent on behalf of first and and second respondents directed to deposit the above said compensation amount together with interest at the rate of 7.5% from the date of petition to the date of realization within a period of six weeks from the date of receipt of copy of this order, less the amount, if any, deposited. On such deposit, the climants are entilted to withdraw the same by making appropriate application.

(iii) The apprortionment of the Tribunal is confimed.

(iii) There shall be no order as to costs.

13.09.2023

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Index:Yes/No
Speaking Order:Yes/No
Neutral Citation Case: Yes/No

To:

1. The Principal District Judge,
   Motor Accident Claims Tribunal,
   Namakkal.

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

K.RAJASEKAR,J.

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