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C.M.A.No.97



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2023

CORAM:

THE HONOURABLE MRS.JUSTICE N.MALA

C.M.A.No.979 of 2022

1.Uma Maheswari

2. Minor Thilak

Represented by his next friend
mother Uma Maheswari/1st appellant

... Appellants

Vs.

1. K.Rajendiran

2.M/s.United India Insurance Co. Ltd.
104-A, Peramanur Main Road
Peramanur, Salem.

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 praying against the judgment and decree dated 07.02.2018 made in M.C.O.P.No.592 of 2015 on the file of the Motor Accidents Claims Tribunal, III Additional District Court, Salem.

For Appellants : Mr.S.P.Yuaraj

For R1 : No appearance

For R2 : Mrs. R.Sreevidhya



JUDGMENT

The appeal is filed by the appellants/claimants for enhancement of compensation granted by the Tribunal in the award dated 07.02.2018 made in M.C.O.P.No.592 of 2015 on the file of the Motor Accidents Claims Tribunal, III Additional District Court, Salem.

2. The brief facts leading to the appeal are that, on 26.11.2014 at about 8.30 a.m., while the deceased Gnanavel was riding his motor cycle bearing Registration No.TN 56 C 6618 on Perundurai to Bhavani Main Road, near Anna salai roundana, Perundurai, the driver of the lorry bearing Registration No.TN 30 P 5164 belonging to the 1st respondent drove the same in a rash and negligent manner and hit against the deceased Gnanavel, causing his death. According to the appellants/claimants, the deceased was aged 47 years at the time of accident and was working as a taxi driver and was earning income at Rs.14,000/- per month. Therefore, the widow and minor son of the deceased Gnanavel filed the claim petition seeking a sum of Rs.40,00,000/- as compensation.

3. Before the Claims Tribunal, the 1st respondent, owner of the lorry remained exparte. The Claim Petition was contested by the 2nd respondent/Insurance Company. The 2nd respondent filed a detailed counter denying all the averments made in the Claim Petition including negligence, liability and quantum of compensation.



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4. Before the Claims Tribunal, in support of their claim, the 1st appellant/1st claimant examined herself as P.W.1, the eye-witness was examined as P.W.2 and Exs.P1 to P12 were marked. On the side of the 2nd respondent, neither any oral evidence was let in nor any documentary evidence was marked.

5. The Claims Tribunal, on an assessment of entire evidence on record, returned a finding of negligence against the driver of the 1st respondent, assessed the compensation at Rs.13,95,000/- along with 7.5% interest and mulcted the entire liability on the 2nd respondent/Insurance Company. Not satisfied with the quantum of compensation awarded by the Tribunal, the appellants/claimants have filed the present appeal for enhancement of compensation.

6. Learned counsel appearing for the appellants/claimants submitted that the deceased Gnanavel was aged 47 years at the time of accident and was earning a sum of Rs.14,000/- per month by working as a taxi driver. The accident took place in the year 2014 and therefore, the assessment of notional income at Rs.5,000/- by the Tribunal is very much meagre. The appellants have also filed driving license of the deceased Gnanavel to prove that he was working as a taxi driver. Learned counsel further submitted that 25% is to be added towards future prospects and therefore, prayed that the compensation may be enhanced.



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7. Learned counsel appearing for the 2nd respondent/Insurance Company submitted that the award of the Tribunal was fair, just and reasonable and did not call for any interference in the appeal.

8. Though notice was served on the 1st respondent and his name is printed in the cause list, none appears on his behalf.

9. I have heard the learned counsel appearing for the appellants and learned counsel for the 2nd respondent/Insurance Company and perused the entire materials placed on record.

10. It is seen from the records that the accident took place on 26.11.2014 and the appellants/claimants have also filed driving license of the deceased as Ex.P5 to prove that he was working as a taxi driver at the time of accident. The assessment of notional income by the Tribunal at Rs.5,000/- per month in my view, is very much meagre. Considering the cost escalation for the year 2014 and age of the deceased, I am of the view that the notional income of the deceased can be fixed at Rs.10,000/- per month. The Tribunal did not add any sum towards future prospects. As the deceased was aged 47 years at the time of accident, as per the judgment of the Hon'ble Supreme Court in the case of *National Insurance Company Limited Vs. Pranay Sethi and others* reported in (2017) 16 SCC 680, 25% is added towards future prospects. If 25% is added towards future prospects i.e. Rs.2,500/- (Rs.10,000/- X



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25/100), the income would be Rs.12,500/- (Rs.10,000/- + 2500). If 1/3rd is deducted towards personal expenses of the deceased, it comes to Rs.8,334/- (12,500 - 4166).

Thus, the compensation awarded by the Tribunal towards loss of dependency is modified as Rs.13,00,104/- and rounded off to Rs.13,00,000/- (Rs.8,334/- X 12 X 13).

11. The Tribunal has awarded Rs.40,000/- towards loss of estate and Rs.15,000/- towards loss of consortium and the same is modified to the effect that the 1st appellant/1st claimant would be entitled to Rs.40,000/- towards loss of consortium, the 2nd appellant/2nd claimant would be entitled to Rs.40,000/- towards loss of love & affection and the appellants would be entitled to Rs.15,000/- towards loss of estate. The award of the Tribunal under the other heads “medical expenses” and “funeral expenses” are just and reasonable and the same are therefore confirmed.

12. In view of the above discussions, the award of the Tribunal is modified as follows:

<i>S.No.</i>	<i>Various Heads</i>	<i>Award of the Tribunal</i>	<i>Award of this Court</i>
1.	Loss of dependency	Rs.5,20,000/-	Rs.13,00,000/-
2.	Funeral expenses	Rs.15,000/-	Rs.15,000/-
3.	Loss of consortium and loss of love & affection	Rs.40,000/-	Rs.80,000/- (Rs.40,000/- X 2)
4.	Loss of estate	Rs.15,000/-	Rs.15,000/-
5.	Medical expenses	Rs.8,05,000/-	Rs.8,05,000/-
Total Compensation		Rs.13,95,000/-	Rs.22,15,000/- enhanced amount Rs.8,20,000/-

The appellants are entitled to the total compensation of Rs.22,15,000/- along with



interest at the rate of 7.5% per annum from the date of petition till the date of deposit.

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13. It is submitted by the learned counsel for the 2nd respondent/Insurance Company that appeal was filed with the delay of 1378 days and delay was condoned by order of this Court dated 12.04.2022 made in C.M.P.No.4120 of 2022 in C.M.A.SR.No.17471 of 2022, on condition that the appellants shall forfeit the interest for the delay period of 1378 days. In view of the above submission, it is made clear that the appellants/claimants would not be entitled to interest for the delay period of 1378 days on the amount of Rs.8,20,000/- enhanced by this Court.

14. It is submitted by the learned counsel for the 2nd respondent/Insurance Company that the entire amount awarded by the Tribunal along with accrued interest and costs was already deposited before the Tribunal. In view of the said submissions, there shall be a direction to the 2nd respondent/Insurance Company to deposit the enhanced amount of Rs.8,20,000/- along with 7.5% interest (excluding the delay period) 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. It is submitted by the learned counsel for the appellants/claimants that the 2nd appellant/2nd claimant, attained majority. In view of the said submissions, on the deposit being made by the 2nd respondent/Insurance Company, the appellants/ claimants shall be entitled to withdraw the amount, as per the apportionment fixed by the Tribunal, less the amount



C.M.A.No.97



if any, already withdrawn, by making proper application before the Claims Tribunal.

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15. The appeal is accordingly partly allowed. There shall be no order as to costs.

19.06.2023

Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No

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To

1.The III Additional District Judge
Motor Accidents Claims Tribunal
Salem.

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

N.MALA.J.,



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