IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2023

CORAM :

THE HONOURABLE MR. JUSTICE A.A. NAKKIRAN

Civil Miscellaneous Appeal No. 1330 of 2018

1.D. Suguna
2.Ganga @ Panchali
3.Karthiga
4.Gayathiri .. Appellants

Versus

1.K. Vaithianathan

2.M/s. United India Insurance Co. Ltd.,
No.16, 1st floor, J.N. Street,
Puducherry – 605 001. .. Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 28.04.2017 of the Motor Accident Claims Tribunal (PDJ) at Pondicherry passed in M.A.C.T.O.P. No. 767 of 2013.

For Appellant	:	Mr. Sunny Sheen for Ms. V. Srimathi
For Respondents	:	No Appearance for R1
	:	Mr.P.Sankaranarayana for R2

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the claimants assailing the award dated 28.04.2017 passed by the Motor Accident Claims

Tribunal (PDJ), Pondicherry in M.A.C.T.O.P. No. 767 of 2013 awarding a sum of Rs.4,22,000/- as compensation for the death of Dhananjeyan, husband of the first claimant and father of the claimants 2 to 4.

2. The brief facts leading to the filing of the instant appeal are as follows:

(i) As per the claim petition, the deceased Dhananjeyan, husband of the first claimant was driving the two wheeler bearing Registration No. PY 01 AH 2427 slowly and cautiously, however, the driver of the bus, bearing Registration No.PY-01-BP-7699, owned by the first respondent and insured with the second respondent, drove it in a rash and negligent driving and hit the two wheeler driven by the deceased from behind. In the impact, the deceased sustained grievous injuries and taken to Government General Hospital, Pondicherry, where, after initial treatment, referred the deceased to be taken to a multi-specialty hospital for better treatment. When the deceased was shifted to Global Hospital, Chennai, he was declared brought dead. Therefore, for the death of the deceased, the appellants have filed M.A.C.T.O.P. No. 767 of 2013 seeking compensation of Rs.25,00,000/-.

(ii) The Motor Accident Claims Tribunal, by its award dated 28.04.2017 in M.A.C.T.O.P. No. 767 of 2013 directed the second respondent to pay the appellants a sum of Rs.4,22,000/- together with interest at the rate of 7.5% per annum from the date of petition till payment and costs.

3. Aggrieved by the award dated 28.04.2017 passed in M.A.C.T.O.P. No. 767 of 2013, the claimants have filed this appeal seeking enhancement of compensation. The insurance company has not filed any appeal as against the said award dated 28.04.2017.,

4. Heard the learned counsel for the appellants and the learned counsel for the second respondent.

5. According to the learned counsel for the appellants, the deceased was the owner of agricultural lands and was cultivating the lands on his own. Even as a farmer, the deceased could have easily earned a sum of Rs.15,000/- per month and Rs.1,50,000/- per annum if he works for 300 days in a year. However, the Tribunal, without regard to the above aspects, has taken the monthly income at Rs.4,500/- and applied multiplier '8' to arrive at Rs.3,24,000/- which is very low. The Tribunal also brushed aside the fact that the deceased was the only earning member with whose income he had taken care of his wife, three children and himself. While so, the amount of

Rs.4,500/- fixed by the Tribunal as notional income of the deceased is very low and it had resulted in miscarriage of justice.

6. Per contra, the learned counsel for the second respondent / Insurance Company submits that the accident occurred due to the negligent driving on the part of the deceased, who was under the influence of the alcohol. In any event, the deceased was 55 year old at the time of accident and therefore his earning capacity was rightly determined at Rs.4,500/- per month to arrive at the sum of Rs.3,24,000/- towards loss of earning capacity. In the absence of any proof to show the income of the deceased, the Tribunal is wholly justified in fixing a sum of Rs.4,500/- per annum as monthly income. Thus, the learned counsel submitted that the compensation awarded by the Tribunal is proper and hence, prayed for dismissal of the appeal.

7. The details of the compensation awarded by the Tribunal under the impugned award are as follows:

Heads	***Award Amount (Rs.)***
Pecuniary Loss	3,24,000/-
Funeral Expenses	10,000/-
Loss of Estate	10,000/-

Heads	*Award Amount (Rs.)*
Loss of consortium to the first petitioner	25,000/-
Loss of love and affection to the petitioners 2 to 4 (Rs.10,000/- each)	30,000/-
Transport Expenses	23,000/-
Total	**4,22,000/-**

8. At the outset, it must be stated that the deceased was 55 years old. This is explicit from the Claim Petition as well as the postmortem report. For the death of 55 year old man, the Tribunal ought not to have taken the multiplier '8'. In the light of the reported decision in the case of ***Sarla Verma and others*** Vs. ***Delhi Transport Corporation and another*** reported in ***2009 ACJ 1298 SC***, for the age group between 55 to 60 years old, the multiplier to be adopted is '9'.

9. As per the Constitution Bench judgment of the Honourable Supreme Court in ***National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC),*** 40% has to be added towards future prospects, if the deceased was self employed. In this case, the deceased was an agriculturalist, aged about 55 years and therefore,

10% can be added towards future prospects.

10. It is true that the claimants did not file any proof to show the income of the deceased, but claimed that he earned Rs.15,000/- per month. At the same time, the Tribunal, without taking note of the fact that the accident had taken place during the year 2013, fixed Rs.4,500/- per month, which is meager. In the opinion of the Court, taking note of the year of accident, age of the deceased and the submission of the counsel for the appellants, fixing a sum of Rs.7,000/- per month will meet the ends of justice. As observed above, if 10% of the sum of Rs.7,000/- is taken as future prospects, the monthly notional income of the deceased will be Rs.7,700/-. Taking note of the size of the family, being the wife and three children, giving 1/4th deduction will be proper. After deducting 1/4th towards personal expenses, the monthly income of the deceased comes to Rs.5,775/- (Rs.7,700/- (-) 1/4th of Rs.7,700/-). By applying muyltiplier, the loss of earning capacity can be determined at Rs.6,23,700/- as given below

Total loss of income =Rs.5,775/-X12X9

=Rs.6,23,700/-.

Funeral Expenses:

11. The Tribunal has awarded a sum of Rs.10,000/- towards funeral expenses and the same is confirmed.

Loss of estate:

12. The Tribunal has awarded a sum of Rs.10,000/- towards loss of estate and the same is also hereby confirmed.

Loss of consortium:

13. The Tribunal has awarded a sum of Rs.25,000/-, towards loss of consortium. As per the Constitution Bench's judgment in ***National Insurance Company Limited V. Pranay Sethi and others,*** reported in ***2017 (2) TN MAC 609 (SC),*** a sum of Rs.40,000/- has to be awarded towards loss of consortium to the wife of the deceased, and accordingly, the same is awarded.

Loss of love and affection:

14. The Tribunal has awarded only a sum of Rs.10,000/- each to the claimants 2 to 4. At the time of filing the claim petition, the claimants 2 to 4 were aged 23, 19 and 15 respectively. The fourth claimant was admittedly a minor. Taking note of the above, this Court is of the view that the amount awarded towards Loss of Love and Affection can be enhanced to Rs.40,000/- each to the claimants 2 to 4.

Transport expenses:

15. The Tribunal has awarded a sum of Rs.23,000/- towards transport expenses and the same is confirmed.

For the foregoing reasons, the award passed by the Tribunal is modified as follows:

Heads	*Amount awarded by the Tribunal (Rs.)*	*Amount awarded by this Court (Rs.)*
Pecuniary Loss	3,24,000/-	6,23,700/-
Funeral Expenses	10,000/-	10,000/-
Loss of Estate	10,000/-	10,000/-
Loss of consortium to the first petitioner	25,000/-	40,000/-
Loss of love and affection to the petitioners 2 to 4 (Rs.10,000/- each)	30,000/-	1,20,000/- (Rs.40,000/- each to the claimants 2 to4)
Transport Expenses	23,000/-	23,000/-
Total	**4,22,000 /-**	**8,26,700/-**

10. In the result, this Civil Miscellaneous Appeal is allowed. The Insurance Company is directed to deposit the entire amount awarded by this Court along with 7.5% interest, within a period of four weeks from the date of receipt of copy of this order. On such deposit being made, the first appellant is entitled to Rs.3,76,700/- and the appellants 2 to 4 are entitled to Rs.1,50,000/- each. The appellants are permitted to withdraw the said sum by filing an appropriate application before the Tribunal. It is brought to the notice

of this Court that the fourth claimant has reached majority and the same is hereby recorded.

05.04.2023

Index: Yes/No
Neutral Citation: Yes/No

AT

To

1.TheMotor Accident Claims Tribunal, (PDJ) at Pondicherry.

2. The Section Officer,
VR Section,
High Court, Madras.

A.A.NAKKIRAN, J.

AT

C.M.A.No.1330 of 2018

05.04.2023