IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 29.09.2023

CORAM

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A. No.2364 of 2023

G.Amsa ...Appellant

Versus

1. Gangaram
2. Cholamandalam MS General Insurance Company Ltd.,
   N.S.C.Bose Road,
   Chennai. ...Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the decree and judgment dated 25.09.2014 made in MCOP.No.3936 of 2012, on the file of Motor Accident Claims Tribunal, (III Small Causes Court), Chennai.

For appellant : Mr.K.Varadha Kamaraj

For respondents
for R1 : Exparte
for R2 : Mrs.R.Sreevidhya

JUDGMENT

The claimant has preferred the instant appeal seeking enhancement of compensation.

2. The claimant/appellant, who is the wife of the deceased Gopal, filed a petition seeking compensation stating that on 31.03.2012 at about 3.00 p.m., while the deceased was going on a public road, the van belonging to the first respondent and insured with the second respondent came in the opposite direction in a rash and negligent manner and dashed against the vehicle of the deceased, as a result of which, the deceased sustained fatal injuries.

3. The first respondent remained exparte before the Tribunal. The second respondent filed counter stating that the accident took place due to the negligence of the deceased; that the cheque issued towards premium for the insurance policy was dishonoured and therefore, the policy had been cancelled and hence, they are not liable to pay compensation; that in any case, the quantum of compensation claimed by the appellant was excessive and hence, prayed for dismissal of the claim petition.

4. The appellant examined PWs1 to 3 and marked Exs.P1 to P6. The second respondent examined RW1 and marked Exs.R1 to R7. The Tribunal

after taking into consideration the oral and documentary evidence held that the accident took place due to the negligence of the driver of the Van insured with the second respondent. Since the cheque issued towards premium was dishonoured due to insufficient funds, the policy was cancelled and therefore, the Tribunal directed the second respondent to pay the compensation at the first instance and thereafter, recover it from the first respondent. The Tribunal awarded a total compensation of Rs.6,55,000/-.

5. The learned counsel for the appellant submitted that the compensation awarded by the Tribunal is meagre; that the appellant by examining the employer PW3 had proved the avocation and income of the deceased; that the Tribunal had fixed a low income of Rs.6,000/- per month; that the multiplier applied by the Tribunal is erroneous and that the Tribunal has not granted compensation by taking into account the future prospects.

6. Since R1 remained exparte before the Tribunal, the learned counsel made endorsement to dispense with notice to R1 and hence, notice to R1 is dispensed with.

7. Per contra, learned counsel for the second respondent/Insurance Company submitted that the instant appeal has been filed belatedly. The award was passed in the year 2014 and subsequently, the second respondent had deposited the award amount. After withdrawing the said amount, the instant appeal has been preferred as an after thought and therefore, this appeal should not be entertained. The learned counsel further submitted that the award of compensation is just and reasonable and no interference is called for.

8. The only question that arise for consideration in the instant appeal is as to whether the compensation awarded by the Tribunal is just and reasonable.

9. It is seen that the appellant had examined PW3, who was the employer of the deceased to show that the appellant was working as a Welder in St. Mary's Industries and was earning Rs.15,000/- per month. However, the appellant has not filed any Bank statement or appointment order to justify her claim that the deceased was earning Rs.15,000/- per month. Taking into consideration of the fact that the deceased was aged about 27 years, his avocation and the year of accident, this Court is of the view that it would be just and reasonable to fix the notional income of the deceased at Rs.8,000/-.

The appellant would be entitled to 40% towards future prospects and the multiplier to be applied is "17". Thus, the award of the compensation under the head Loss of Income is calculated as follows:

Monthly Income	:	Rs.8,000/-
Add: Future Prospects at 40%	:	
40% of 8,000		Rs.3,200/-

		Rs.11,200/-
Annual Income (11,100 x 12)	:	Rs.1,34,400/-
Multiplier	:	x 17

		Rs.22,84,800/-
Less:1/2 Deduction towards personal expenses	:	Rs.11,42,400/-
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Loss of Income		**Rs.11,42,400/-**

10. The award under the head loss of Love and Affection at Rs.1,00,000/- is excessive and the same is reduced to Rs.40,000/-. The Tribunal had not awarded any amount under the head Loss of Estate and hence, Rs.15,000/- is granted under the said head. Thus, the award of the

Tribunal is modified as follows:

S. No.	*Heads under which amounts are awarded by the Tribunal*	*Amount awarded by the Tribunal in Rs.*	*Amount awarded by this Court in Rs.*
1.	Loss of Income	5,40,000	11,42,400
2.	Loss of Love and Affection	1,00,000	40,000
3.	Funeral Expenses	15,000	15,000
4.	Loss of Estate	-	15,000
	Total	**6,55,000**	**12.12,400**

11. Though there is a delay in preferring the appeal, the claimants/appellants are entitled to just compensation and the appeal cannot be dismissed on the ground of delay alone. It is to be noted that the petition to condone the delay in filing appeal, was allowed on condition that the appellant shall be entitled to interest only from the date of filing of the instant appeal, i.e., on 24.02.2023.

12. It is also submitted by the learned counsel for the Insurance Company that the award amount was already deposited and the same has been withdrawn by the appellant. Therefore, the enhanced compensation of Rs.5,57,400/- shall be deposited by the Insurance Company within a period of six weeks from the date of receipt of a copy of this order. The appellant would be entitled to interest at the rate of 7.5% per annum for the said sum from

February 2023 till the date of payment. On such deposit, the appellant would be entitled to withdraw the same. Further, the finding of the Tribunal granting liberty to the second respondent to recover the compensation amount from the first respondent is confirmed. The second respondent therefore is at liberty to recover the compensation amount from the first respondent. No costs.

29.09.2023

Speaking Order : Yes / No
Index : Yes / No
pvs

To
1. III Small Causes Court,
   Motor Accident Claims Tribunal, Chennai
2. The Section Officer,
   V.R.Section, High Court, Madras.

SUNDER MOHAN, J.

pvs

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