IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 11.07.2023

CORAM:
THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.885 of 2022

1.C.Kalpana
2.C.Divya (minor)
3.C.Dharanidharan (minor)
(Minors represented by mother and N.F
the 1st appellant)

4. B. Jayalakshmi ...Appellants

Versus

1.Sri Sai Ram Homeopathy Medical College &
Research Centre,
Tambaram to Somangalam Road,
Poonthandalam Village, Sriperumbudur Taluk,
Kancheepuram District.

2. The New India Assurance Company Limited,
No.45, Moore Street, V Floor,
Chennai – 600 001. ...Respondents

PRAYER : The Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 09.03.2021 in MACT.O.P.No.819 of 2016 on the file of the Special Court II, Motor Accident Claims Tribunal, Chennai.

For Appellants : Mr.N.M.Muthurajan

For Respondents : Mr.P.Kandasamy for R2
No appearance for R1

J U D G M E N T

The Civil Miscellaneous Appeal is filed for enhancement of compensation awarded by the Tribunal, dated 09.03.2021 made in MACT.O.P.No.819 of 2016 on the file of the Special Court-II, Motor Accident Claims Tribunal, Chennai.

2. The appellants are the claimants in MACT.O.P.No.819 of 2016 on the file of the Special Court-II, Motor Accident Claims Tribunal, Chennai. They filed claim petition claiming a sum of Rs.40,00,000/- as compensation for the death of Chandrasekaran who died in the accident that took place on 17.08.2015.

3. According to the appellants, on 17.08.2015 at about 19.15 p.m., while the deceased was riding his two wheeler bearing Registration No.TN-22-BM -5594, the driver of the bus belonging to the 1st respondent bearing Registration No.TN-22-BV-8296 came in a rash and negligent manner without observing the Traffic Rules and dashed against the two wheeler of the deceased; that due to the impact, the deceased suffered injuries and succumbed to death; that the deceased was aged about 30 years and was working as a painting contractor; and that he was a sole bread winner of his family and hence, the respondents 1 and 2 are liable to pay Rs.40,00,000/- as compensation to the claimants.

4. The first respondent, who is the owner of the bus remained ex-parte before the Tribunal.

5. The second respondent/Insurance Company filed a counter statement denying all the averments made in the claim petition and stated that the first respondent has violated the condition of the policy and in any case, the compensation claimed by the claimants is excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, the claimants examined P.W.1 to P.W.3 and marked Exs.P1 to P15. The 2nd respondent/Insurance Company did not let-in any oral and documentary evidence.

7. The Tribunal considering the pleadings, oral and documentary evidence, held that the deceased died due to rash and negligent act of the driver of the first respondent's bus and directed the second respondent/Insurance Company being the insurer of the vehicle to pay a sum of Rs.23,32,000/- as compensation to the appellants.

8. The learned counsel for the appellants submitted that the deceased was working as a painting contractor and was earning a sum of Rs.24,000/- per month. The Tribunal ought not to have fixed the meagre a sum of Rs.10,000/- as notional income for the accident which took place in the year, 2015 and hence, prayed that the compensation under the head "Loss of Dependency" should be enhanced.

9. Per contra, the learned counsel for the second respondent/Insurance Company submitted that the compensation awarded by the Tribunal was just and fair. There is no need to interfere with the compensation awarded by the Tribunal. He further submitted that the

claimants have not established the income of the deceased and that the Tribunal has rightly fixed the notional income at Rs.10,000/- per month and that there is no necessity for enhancement of the notional income and prayed for dismissal of the above appeal.

10. Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the second respondent/Insurance Company and perused all the materials available on record.

11. Though notice was served on the first respondent, none appeared on behalf of the first respondent.

12. This Court finds that the Tribunal has disbelieved Ex.P6 salary certificate of the deceased. As per the salary certificate, the income of the deceased is Rs.25,000/- per month. This Court is of the view that the said finding of the Tribunal disbelieving Ex.P6 produced on the side of the claimants, cannot be faulted. However, this Court is unable to agree with the finding of the Tribunal fixing the notional income at Rs.10,000/-. The evidence of PW1 and PW2 reveals that the deceased was working as a painting contractor. Even taking a conservative view, the notional income

fixed by the Tribunal at Rs.10,000/- is meagre. Considering the fact that the wages of the painting contractors have been considerably increased and since the accident was of the year 2015, this Court is of the view that the notional monthly income can be fixed at Rs.13,000/-. The deceased is entitled to 40% income towards future prospects. The multiplier applicable is 17 as the deceased was aged about 30 years at the time of accident. One fourth has to be deducted from the income as the deceased had four dependants. Hence the compensation under the head "Loss of Dependency" has to be fixed at Rs.13,000/- + 5,200 (40% future prospects) = Rs.18,200/- x 12 x 17 (since deceased was aged 30 years) = Rs.37,12,800. Out of which, 1/4th deducted towards personal expenses of the deceased at Rs.9,28,200/- (Rs.37,12,800-Rs.9,28,200= Rs.27,84,600). Therefore, the appellants are entitled to compensation under the head "Loss of Dependency" at Rs.27,84,600/-. The award of the Tribual under other heads are just and reasonable and need not be interfered with.

13. Accordingly, the compensation awarded by the Tribunal is modified as follows:-

Sl.	Description	Amount	Amount	Award

No.		awarded by Tribunal (Rs)	awarded by this Court (Rs)	confirmed or enhanced or granted or reduced
1	Loss of Dependency	21,42,000	27,84,600	Enhanced
2.	Loss of Love and Affection	40,000	40,000	confirmed
3.	Loss of Estate	15,000	15,000	confirmed
4.	Funeral Expenses	15,000	15,000	confirmed
5.	Loss of consortium to the 4th appellant	80,000	80,000	confirmed
6.	Loss of consortium to the minor son	40,000	40,000	Confirmed
	Total	**23,32,000**	**29,74,600**	Enhanced by Rs.6,42,600/-

14. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.23,32,000/- is hereby enhanced to Rs.29,74,600/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellants/claimants are directed to pay necessary Court fee, if any, on the enhanced compensation. The appellants are entitled as per the apportionment fixed by the Tribunal. As far as the share of the minor claimants are concerned, the same shall be deposited in anyone of the Nationalised Bank, in the interest bearing Fixed Deposit, till the minors attain majority and the

natural guardian of the minors, being the 1st appellant, is permitted to withdraw the accrued interest thereon once in three months.

15.The 2nd respondent/Insurance Company is directed to deposit the modified award amount along with interest and costs, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants 1 and 4 are permitted to withdraw their respective shares of the award amount along with proportionate interest and costs, after adjusting the amount if any, already withdrawn. No costs.

11.07.2023

Index: Yes/No
Internet: Yes/No
Neutral Citation: Yes/ No
GBA

To

1. The Special Court II,
   Motor Accident Claims Tribunal, Chennai.

2.The Section Officer
VR Section
High Court of Madras
Chennai – 600 104

SUNDER MOHAN,J.

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