IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 24.01.2023	Pronounced on 07.03.2023

CORAM

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.Nos.2107 & 2016 of 2018

1.Parvathi
2.Kalpana
3.Sathish
4.Rajamanickam ... Appellants in C.M.A.No.2107 of 2018

Arul ... Appellant in C.M.A.No.2016 of 2018

Vs.

1.Srinivasan
2.Kannusamy
3.The United India Insurance Company Ltd.,
Branch Office, Oriental Theatre Complex,
No.77, Arunachala Achari Street,
Salem – 636 001. ... Respondents in both the appeals

Common prayer: Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 16.07.2015 passed in M.C.O.P.Nos.250 & 251 of 2010 respectively on the file of the Motor Accident Claim Tribunal/Subordinate Court, Sankari, and enhance the compensation awarded by the Tribunal.

(In both the appeals)

For Appellants : Mr.A.R.Suresh

For Respondents : Mr.Arunkumar (for R3)

COMMON JUDGMENT

These civil miscellaneous appeals have been filed against the Judgment and Decree dated 16.07.2015 passed in M.C.O.P.Nos.250 & 251 of 2010 respectively on the file of the Motor Accident Claim Tribunal/Subordinate Court, Sankari.

2. Legal representatives of the deceased Rajamanickam, have filed M.C.O.P.No.250 of 2010 and the injured Arul has filed M.C.O.P.No.251 of 2010, seeking compensation for the road transport accident occurred on 08.09.2009.

3. For the sake of convenience, the parties are referred to as per their litigating status before the Tribunal.

4. The factum of the accident, manner of the accident, rash and negligence on the part of the driver of the vehicle and the insurance Company, which are jointly or severally liable to pay the compensation are not in dispute. Accordingly, the findings rendered by the Tribunal are hereby confirmed.

5. On the point of quantum of compensation, heard the respective counsels. The deceased Saravanan is said to have been earning income through his Hotel and Bakery shop. P.W.s.1, 6 and 7 deposed about running of the deceased Saravanan's shop, however, no positive evidence has been produced to prove the income of the deceased. Hence, the Tribunal has fixed at Rs.4500/- per month as notional income of the deceased. The accident is of the year 2008 and hence, this Court finds that minimum notional income may be fixed at Rs.7000/- per month. Considering the age of the deceased is 25 years, at the time of accident, 40% has to be added as future prospects. As per the judgment of the Hon'ble Supreme Court of India in the case of ***Sarla Verma & Others .Vs. Delhi Transport Corporation & another,*** reported in ***2009 (2) TNMAC 1 (SC)*** “18” is the right multiplier. Since the deceased died as a bachelor, 50%

has to be deducted towards personal expenses and therefore, the pecuniary loss sustained by the parents of the deceased is re-assessed as under:

Rs.7000/- + 40% of 7000 = Rs.9,800/-

Rs.9800/- x 12 x 18 x 1/2 = Rs.10,58,400/-

6. The dependents of the deceased are four and therefore, a sum of Rs.1,60,000/- (Rs.40,000/- x 4) is awarded towards loss of love and affection, a sum of Rs.15,000/- is awarded towards funeral expenses, a sum of Rs.15,000/- is awarded towards loss of estate, and hence the total compensation is revised from Rs.11,48,075/- to Rs.12,48,400/-.

S.No.	***Heads***	***Amount (Rs.)***
1	Pecuniary loss	10,58,400/-
2	Funeral Expenses	15,000/-
3	Loss of estate	15,000/-
4	Loss of love and affection	1,60,000/-
	Total	12,48,400/-

The Appeal was filed with the delay of 617 days and while allowing the condone delay petition in C.M.P.No.11838 of 2017, this Court had held that the claim Petitioner will not be entitled to interest for the default period.

7. In C.M.A.No.2016 of 2018, the injured Arul, seeking enhancement for the injuries sustained by him in the road transport accident occurred on 08.09.2009.

8. On the point of quantum of compensation, both the parties have been heard. The Tribunal has taken percentage of the disability at 38%, based upon evidence of PW5/Doctor, who issued the disability certificate Exs.P24.

9. After going through the oral and documentary evidence of PW5 coupled with Ex.P24, the Tribunal has rightly come to the conclusion that the deceased suffered 38% of disability. However, chosen to grant Rs.2000/- for 1% disability, which is enhanced to Rs.3000/- and accordingly, (38 x 3000) Rs.1,14,000/- is awarded towards disability. Rs.10,000/- is awarded towards pain and suffering , for loss of income a sum of Rs.15000/- (Rs.5000 x 3) is awarded. As per Ex.P.15 & Ex.P.16/medical bills, a sum of Rs.55,000/- is awarded towards medical expenses, for nutrition and extra nourishment a sum of Rs.10,000/- is awarded, for transportation a sum of Rs.10,000/- is awarded, for loss of amenities a sum of Rs.10000/- is awarded and hence, compensation

is enhanced from Rs.1,54,500/- to Rs.2,24,000/-.

S.No.	***Heads***	***Amount (Rs.)***
1	Loss of earning capacity	114000
2	Pain and sufferings	10000
3	Transportation	10000
4	Loss of income	15000
5	Loss of amenities	10000
6	Nutrition and extra nourishment	10000
4	Medical expenses	55000
	Total	224000

The Appeal was filed with the delay of 529 days and while allowing the condone delay petition in C.M.P.No.13710 of 2017, this Court had held that the claim Petitioner will not be entitled to interest for the default period.

CMA.No.2107 of 2018;

10.In fine,

(i) this Civil Miscellaneous Appeal stands partly allowed enhancing the award amount from Rs.11,48,075/- to Rs.12,48,400/-, with interest 7.5% per annum, to the extent indicated above. No Costs. Consequently, connected Miscellaneous Petition is closed.

(ii) the Insurance Company is directed to deposit the enhanced award amount, with interest and costs before the Tribunal, (excluding the interest for the default period) within a period of eight weeks from the date of receipt of a copy of this order.

(iii) on such deposit being made, all the claim Petitioners/Appellants are entitled to get their share in the enhanced award amount, as per the ratio of apportionment made by the Tribunal. The claim Petitioners are permitted to withdraw their entire share with proportionate interest and costs, less the award amount already withdrawn, if any, by filing necessary application before the Tribunal.

(iv) the claim Petitioners are directed to pay the court fee, if any, for the enhanced compensation amount and the Registry is directed to draft the decree only after the receipt of Court fee.

CMA.No.2016 of 2018;

(i) this Civil Miscellaneous Appeal stands partly allowed, enhancing the award amount from Rs.1,54,500/- to Rs.2,24,000/- to the extent indicated above, with 7.5% interest per annum. No Costs.

(ii) the Insurance Company is directed to deposit the enhanced award amount before the Tribunal, (excluding the interest for the default period) within a period of eight weeks from the date of receipt of a copy of this order, less the amount, if any already deposited.

(iii) on such deposit being made, the claim Petitioner/Appellant is permitted to withdraw the entire enhanced award amount with accrued interest and costs, less the award amount, if any, already withdrawn, by filing necessary application before the Tribunal.

(iv) the claim Petitioner/Appellant is directed to pay the court fee, if any, for the enhanced compensation amount and the Registry is directed to draft the decree only after the receipt of Court fee.

07.03.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order

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To

The Presiding Officer,
The Motor Accident Claim Tribunal, Special Subordinate Court No.I,
Salem.

RMT.TEEKAA RAMAN.J,

ata

Pre-delivery Judgment made in

C.M.A.Nos.2107 & 2016 of 2018

Dated: 07.03.2023