IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :20.04.2023

CORAM

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

C.M.A.No.2465 of 2019

1.Muthulakshmi
2.Rajasri ...Appellants

Vs.

1.Jeevarathinam
2.Murthy
3. The New India Assurance Co., Ltd., Tranquebar
Represented by its Branch Manager,
Having his office at Ground Floor, S.S.Pillai Complex
Thottam Eeezha Veethi, Porayar Town
Tranquebar Taluk and District ..Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the Judgment and Decree passed in MACTOP.No.2 of 2017 dated 02.10.2018 on the file of Motor Accident Claims Tribunal (District Court) Karaikal.

For Appellants : Mr.T.Sai Krishnan
For Respondents : No appearance for R1 & R2
Mr.M.Krishnamoorthy for R3

JUDGMENT

This appeal has been filed by the claimants seeking enhancement of compensation under the impugned award dated 02.10.2018 passed by the Motor Accident Claims Tribunal (District Court) Karaikal, in MACTOP.No.2 of 2017.

2. On 29.08.2016 at 11.00 a.m., while the deceased Raghavan was riding his motor cycle bearing Regn.No. TN-51-AX-4302 with a pillion rider at Bharathiar road, Royanpalayam, Kottucherry near Rajasthan Marbles from North to South, a motor cycle bearing Regn.No.PY-02-K-0284 was driven by the first respondent from opposite direction from South to North with a pillion rider and hit on the vehicle of the deceased. As a result of which, the said Raghavan was seriously injured and taken to General Hospital, Karaikal, for treatment. Thereafter he was admitted in Thanjavur Medical College Hospital, Thanjavur and reported dead on 29.08.2016. Claiming that the deceased was a fisherman earning not less than Rs.10,000/- per day, the appellants/claimants have filed a claim petition claiming a sum of Rs.28,00,000/-. The Tribunal adjudicated the issues with reference to the documents and evidences. The Insurance Company has defended their case. The Tribunal has awarded a total compensation of Rs.11,67,000/-.

3. The appellants unsatisfied with the quantum of compensation awarded by the Tribunal under the impugned award have preferred this appeal seeking enhancement.

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

Heads	*Award Amount (Rs.)*
Loss of income	11,22,000/-
Love and affection for the first petitioner	25,000/-
Funeral Expenses	15,000/-
Transport Expenses	5,000/-
Total	**11,67,000/-**

5. Before the Tribunal, the Appellants/claimants examined three witnesses as PW1 to PW3 and filed fourteen documents which were marked as Ex.P1 to Ex.P14. On the side of the third respondent, one witness was examined as RW1. However, no document was marked.

6. Heard the learned counsel for the appellants and learned counsel for the third respondent and perused the materials available on record.

7. The learned counsel appearing for the Appellants/Claimants submitted that the Judgement and decree of the Tribunal are contrary to law, facts, evidence and probabilities of the case. The Tribunal has erred in fixing a low income of only Rs.8000/- for the deceased who was earning Rs.500/- per day. It ought to have adopted a practical and pragmatic approach in fixing the monthly income of the deceased. It ought to have appreciated that the deceased has left behind one daughter and his wife who are only dependent on the deceased and in circumstances just and fair compensation should be awarded by fixing an income at Rs.30,000/- per month. The multiplier adopted by the Tribunal is a lesser one. The Tribunal erred in dismissing the claim petition as against the 2nd appellant because she is the sister and holding that she is not the dependant. The Tribunal, without appreciating the evidences properly, has awarded the total

compensation of Rs.11,67,000/- and the said quantum is unreasonable. Hence, he prayed to enhance the compensation.

8. Per contra, the learned counsel appearing for the third respondent submitted that the compensation claimed by the appellants is highly excessive and baseless. He further submitted that the Tribunal after analysing the evidences on record, has rightly awarded the compensation to the appellants/claimants and hence, the award passed by the Tribunal does not warrant any interference by this Court. Hence, he prays for dismissal of the appeal.

9. The Tribunal has relied upon the evidences of PW1 and PW2 which correlates with Ex.PI/FIR and Ex.P7/post mortem examination report. It is clear that due to the effect of severe head injuries, death caused to the deceased. The age of the deceased was 27 years as seen from the Post Mortem Examination Report and hence, the Tribunal has taken the age of the deceased as 27 years. Considering the age and earning capacity of the deceased, the Tribunal fixed the monthly income of the deceased at

Rs.8000/- per month, adding 40% of the income towards future prospects, deducting 1/2 of the income towards personal expenses of the deceased, adopting the multiplier of 17 (8000+3200-11,200; 11,200/2=5500 x 12 x 17 = 11,22,000/- and has arrived at a sum of Rs.11,22,000/- towards loss of income.

10. On perusal of records, it is seen that the Tribunal has not properly considered the evidences properly and the documents marked. Considering the age of the deceased and rise in cost of living at the present time and also the facts and circumstances of the case, this Court is of the considered view that Rs.12000/- is to be taken as monthly income of the deceased. Since the age of the deceased was 27 years at the time of accident, there is need to change the multiplier as 17. Further, considering the age and earning capacity, 40% should be added towards future prospectus and 1/ 2 has to be deducted towards personal expenses for calculating pecuniary loss of income. If Rs.12000/- is taken as the monthly income of the deceased, after adding 40% towards future prospectus of the deceased and 1 /2 of the amount is deducted towards personal expenses and the multiplier of 17 is

adopted, the loss of income works out to Rs.17,13,600/-, (12000 x 40% = 4800), (12000 + 4800 = 16800 x 1/ 2 =8400; 8400 x 12 x 17 =Rs.17,13,600/-). Accordingly, the amount awarded by the Tribunal towards 'loss of icome' stands enhanced to Rs.17,13,600/-. Similarly, as per the Pranay Sethi case, it would be appropriate to enhance the award under the head of loss of love and affection to the appellants I and 2 to Rs.40,000/- each which would come to Rs.80,000/-, and also Rs.8,000/- towards Transport Expenses. On perusal of records, it is seen that no amount is awarded under the head of loss of estate for which they are entitled to. Hence, this court is inclined to grant a sum of Rs.15,000/- towards loss of estate.

11. Insofar as the assessment of funeral expenses by the Tribunal is concerned, the amount awarded by the Tribunal is a correct assessment. Hence, it does not call for any interference of this court.

12. The details of the enhanced compensation are as under:

Heads	***Award Amount (Rs.)***
Loss of Income	17,13,600/-
Loss of love & Affection to the appellants 1 & 2 (Rs.40000/- each)	80,000/-
Loss of estate	15,000/-
Funeral Expenses	15,000/-
Transport Expenses	8,000/-
Total	**18,31,600/-**

13. Thus, the appellants/claimants are entitled to the enhanced compensation of Rs.**18,31,600/-**. It is made clear that for the enhanced amount of Rs.**18,31,600/-,** the interest rate of 7.5% shall be calculated from the date of filing of this appeal. The third respondent is directed to deposit the award amount within a period of six weeks from the date of copy of this judgement.

14. The Civil Miscellaneous Appeal is partly allowed. No costs.

15. The third respondent/Insurance Company is directed to deposit the enhanced compensation, as ordered above, to the credit of

MACTOP.No.2 of 2017, less the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal, in the same ratio as awarded by it, is directed to transfer the respective shares to the claimants along with accrued interest to the bank account of the of two weeks thereafter. On such transfer, the claimants are entitled to withdraw the same. No costs. appellants through RTGS within a period of two weeks thereafter. On such transfer, the claimants are entitled to withdraw the same. No costs.

16. Since the compensation amount now awarded is Rs.**18,31,600/-**, it is made clear that the claimants have to pay the appropriate Court fee in order to receive the enhanced award amount.

20.04.2023

Index:Yes/No
Internet:Yes/No
gv

A.A.NAKKIRAN, J.

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To

1.The Motor Accident Claims Tribunal/
(District Court) Karaikal.

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

C.M.A.No.2465 of 2019

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