IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.01.2023

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THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

C.M.A.No.301 of 2018

1.Sheela Devi
2.Dhanalakshmi
3.Ramya
4.Janakiammal ...Appellants

Vs

Government of Tamilnadu
Rep by Commissioner of Police
Chennai. ..Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the Judgment and Decree passed in MCOP.No.5023 of 2010 dated 12.02.2013 on the file of Motor Accident Claims Tribunal (XVI Additional District Judge) Chennai.

For Appellants : Mr.A.N.Viswanatha Rao

For Respondent : Mr.C.Jayaprakash
Government Advocate

JUDGMENT

This appeal has been filed by the claimants seeking enhancement of compensation under the impugned award dated 12.02.2013 passed by the Motor Accident Claims Tribunal (XVI Additional Judge) Chennai, in MCOP.No.5023 of 2010.

2. On 10.05.2010 at 12.15 hours, while the deceased was riding a motor cycle bearing Regn.No.TN-07-W-0216 proceeding from North – South at Thiru-vi-ka Salai, a Tempo Traveller bearing Regn.No.TN-01-G-1443 belonging to the respondent and driven by the driver of the respondent in a rash and negligent manner, hit the deceased. Due the said impact, the deceased fell down and died on the spot. Claiming that the deceased was a Proprietor of Sheela Binding Works and earning about Rs.20,000/- per month at the time of accident and the driver of the Tempo is solely responsible for the accident, the appellants/claimants have filed a claim petition claiming a sum of Rs.20,00,000/-.

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	8,40,000/-
Loss of Consortium	50,000/-
Love and Affection	1,00,000/-
Funeral Expenses & Transport expenses	10,000/-
Total	**10,00,000/-**

5. Before the Tribunal, the Appellants/claimants examined four witnesses as PW1 to PW4 and filed 12 documents which were marked as Ex.P1 to Ex.P12. On the side of the Respondent, neither any witness was examined nor any document was filed.

6. Heard the learned counsel for the appellants and the learned

counsel for the respondent and perused the materials available on record.

7. The learned counsel appearing for the Appellants/Claimants submitted that without appreciating the evidences of PW1 to PW4 properly, the Tribunal has awarded the compensation and the said quantum is unreasonable. He further submitted that the award granted by the Tribunal is contrary to law, facts, pleadings, evidences and other probabilities of the case. The Tribunal has not awarded any compensation towards loss of Estate for which they are entitled to. It has erred in awarding Rs.8,40,000/- towards loss of income, Rs.1,00,000/- towards love and affection; Rs.10,000/- towards funeral and transport expenses and the same are very meagre. He further submitted that the Tribunal ought to have add future prospects of the deceased. Hence, he prayed to enhance the compensation.

8. Per contra, the learned counsel appearing for the respondent submitted that the accident occurred due to the rash and negligent driving of the deceased, without obeying the traffic rules, the deceased suddenly entered into the middle of the road. Moreover the compensation claimed by the appellants is highly excessive and baseless. This respondent is not liable

to pay any compensation to the claimants. 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. Considering the earning capacity of the deceased, the Tribunal fixed the monthly income of the deceased at Rs.7500/- for calculating the pecuniary loss on account of the death of the deceased. The Tribunal has awarded a sum of Rs.8,40,000/- towards loss of income by fixing the monthly income of the deceased at Rs.7500/-, deducting 2/3 of the amount towards personal expenses of the deceased and adopting the multiplier of '14'. The Tribunal has relied upon Ex.P3/Legal heir certificate, Ex.P9/Pass book and Ex.P11/payment vouchers and has taken the age of the deceased as 44 years. But not award any amount towards future prospectus. On perusal of records it is seen that the Tribunal has not properly considered the evidences of P.W.1 to P.W.4 properly and the documents marked, while fixing the monthly income of the deceased at Rs.10,000/-. PW4 is the alleged employer of the deceased and gave a monthly salary of Rs.10,000/-

A close scrutiny of the bank transactions of the deceased shows that he has deposited nearly Rs.70,000/- by cash as well as cheques. Hence, the Tribunal fixed the monthly income at Rs.7500/-. Thus, Rs.7500/- x 12 x 14 x 2/3 =Rs.8,40,000/-. It is also seen that the Tribunal has failed to award reasonable amount towards future prospects. It is also seen that the deceased was the entire caretaker of the family having four dependants.

10. Taking note of the above submissions of the learned counsel for the appellants / claimants, economic situation prevailing at that time and also the facts and circumstances of the case, this Court is of the considered view that the 25 % of the future prospectus is to be added to the monthly income of the deceased. There is no need to change the multiplier adopted by the Tribunal. Further, the 2/3rd deduction made by the Tribunal also does not require any interference. If Rs.7,500/- is taken as the monthly income of the deceased, after adding 25% towards future prospectus of the deceased and 2/3rd of the amount is deducted and the multiplier of 14 is adopted, the loss of income works out to Rs.10,50,000/- (Rs.7500 x 25%=1875, 7500+1875=9375 x 12 x14x 2/3 =Rs.10,50,000/-). Accordingly, the amount awarded by the Tribunal towards loss of income stands enhanced to

Rs.10,50,000/-. Similarly, it would be appropriate to award a sum of Rs.15,000/- towards loss of Estate. However, this court reduces the amount to Rs.40,000/- towards loss of consortium.

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

Heads	***Amount awarded by the Tribunal (Rs.)***	***Award Amount by this Court (Rs.)***
Loss of Income (9375x12 x14x2/3)	8,40,000/-	10,50,000/-
Loss of consortium	50,000/-	40,000/-
Love and affection	1,00,000/-	1,20,000/-
Funeral and Transport Expenses	10,000/-	15,000/-
Loss of Estate	---	15,000/-
Total	**10,00,000/-**	**12,40,000/-**

12. Thus, the appellants / claimants are entitled to the modified compensation of Rs.12,40,000/-. It is made clear that for the enhanced amount of Rs.12,40,000/-, the interest rate of 7.5% shall be calculated from the date of filing of this appeal.

13.The Civil Miscellaneous Appeal is allowed. No costs.

14. The respondent is directed to deposit the modified compensation as ordered above, 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 appellants / claimants shall withdraw the same, on making proper application before the Tribunal.

15. Since the compensation amount now awarded is Rs.12,40,000/-, it is made clear that the claimants have to pay the appropriate Court fee in order to receive the awarded amount.

27.01.2023

Index : Yes/No
Internet : Yes/No
gv

To

1.The Motor Accident Claims Tribunal/
(XVI Additional Judge) Chennai.

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

A.A.NAKKIRAN.,J.
gv

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