IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :13.06.2023

CORAM

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

C.M.A.No.1030 of 2014
and
MP.No.1 of 2014

1.Abirami
2.Vinayagammal ...Appellants

Vs

1.M/s.Praveen Travels (P) Ltd.,
39, Medavakkam Tank Road,
Kelly's, Chennai – 600 010.

2.United India Insurance Co.LTd.,
A.R.Complex 2nd Floor No.1090,
P.H.Road,
Chennai – 600 084 ..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.3190 of 2007 dated 31.07.2012 on the file of Motor Accident Claims Tribunal (Chief Small Causes Court, Chennai)

For Appellants : Mrs.Thenmozhi Shivaperumal
for Mrs.Sridevi Sreekanth

For Respondents : Vacated - R1
Mr.S.Arunkumar for R2

J U D G M E N T

This appeal has been filed by the claimants seeking enhancement of compensation under the impugned award dated 31.07.2012 passed by the Motor Accident Claims Tribunal (Chief Small Causes Court, Chennai), in MACTOP.No.3190 of 2007.

2. On 04.05.2007 at about 18.15 hours, one Sundar, after finishing his work, was proceeding in his bike bearing Regn.No.TN-09-AK-5866 near Taluk Office, road opposite to All India Radio, Saidapet. At that time, a private bus bearing Regn.No.TN-02-F-3714 drove the same in a rash and negligent manner and hit the back of the bike. Due to the said impact, the said Sundar sustained multiple injuries and died on the way to the hospital. Claiming that the driver of the bus is responsible for the accident, the claimants have filed a claim petition before the Tribunal claiming a sum of Rs.20,00,000/-. 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.8,35,600/-.

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 pecuniary benefits	7,95,600/- (3900x12x17)
Loss of love & affection	10,000/-
Loss of consortium	20,000/-
Funeral Expenses	10,000/-
Total	**8,35,600/-**

5. Before the Tribunal, the Appellants/claimants examined two witnesses as PW1 and PW2 and filed ten documents which were marked as Ex.P1 to Ex.P10. On the side of the Insurance Company, two witnesses were examined as RW1 and RW2 and filed five documents which were marked as Ex.R1 to Ex.R5.

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

7. The learned counsel appearing for the Appellants/Claimants submitted that the order passed by the Tribunal is contrary to law and weight of evidence. The Tribunal failed to consider the monthly income for the deceased as Rs.30,000/- as he was running a tailoring shop and a travel agency. The Tribunal failed in awarding adequate compensation towards loss of consortium to wife and loss of love and affection to the mother of the deceased. It failed to note that according to the recent Supreme Court judgment in which the Hon'ble Court stated that due to escalation of cost, the worst affected persons are the lower income group and hence it ought to have awarded the claim amount. It also erred in awarding Rs.10,000/- towards funeral expenses irrespective of the fact that the high transportation charges and electric cremation expenses and therefore the court ought to have awarded Rs.20,000/-. It failed to note that as per the citation reported in 2009 Act 1298, 50% has to be taken instead of 30% and moreover, as far as the age of the deceased is concerned, it ought to have to consider 50% instead of 30%. It failed to note that as per the reported judgment in

Supreme Court, the minimum salary of the person should be taken Rs.10,000/- per month and even a coolie is drawing Rs.7000/- per month and therefore how a tailor cum travel agent earned Rs.5850/- and therefore, the Tribunal erred in its finding that the deceased was earning Rs.5850/- per month and it ought to take Rs.10,000/- per month due to the prevailing escalation of cost. The wife of the deceased married him against the wishes of her parents and nobody is willing to help her in this pathetic condition and she is living with her aged mother-in-law and hence Rs.20,000/- towards consortium is too low. The Tribunal failed to note that the multiplying factor must be fixed at 18 instead of 17 years and therefore the claimants are entitled for enhancement of compensation. As far as the second appellant is concerned, she lost her son who was the only earning member of the family. The Tribunal, without appreciating the evidences properly, has awarded the total compensation of Rs.8,35,600/- and the said quantum is unreasonable. Hence, he prayed to enhance the compensation.

8. Per contra, the learned counsel appearing for the second respondent has 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 Ex.P1/Marriage Certificate and Ex.P2/driving license, the Tribunal has taken the age of the deceased as 30 years. Considering the age and earning capacity of the deceased, the Tribunal fixed the monthly income of the deceased at Rs.4500/- per month, adding 30% of the income towards future prospects, deducting 1/3 of the income towards personal expenses of the deceased, adopting the multiplier of 17 (4500 + 30%= 1350; 4500 + 1350 = 5850; 5850 – 1/3(1950) = 3900 ; 3900 x 12x 17 =7,95,600/-), and has arrived at a sum of Rs.7,95,600/- towards loss of pecuniary benefits.

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 economic situation prevailing at the present time and also the facts and circumstances of the case, this Court is of the considered view that Rs.5500/- is to be taken as monthly income of the

deceased. Since the age of the deceased was 30 years at the time of accident, there is need to change the multiplier as 17. Further, considering and age and earning capacity of the deceased, 40% should be added towards future prospectus and 1/3 has to be deducted towards personal expenses for calculating pecuniary loss of income. If Rs.5500/- is taken as the monthly income of the deceased, after adding 40% towards future prospectus of the deceased and 1/3 of the amount is deducted towards personal expenses and the multiplier of 17 is adopted, the loss of income works out to Rs.10,47,132/- (5500 x 40 % = 2200), (5500 + 2200= 7700; 7700 - 1/3 =2567; 7700 - 2567 = 5133 x 12 x17 = Rs.10,47,132/-). Accordingly, the amount awarded by the Tribunal towards 'pecuniary loss of income' stands enhanced to Rs.10,47,132/-. 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 second appellant to Rs.40,000/- and also under the head of consortium to the first appellant to Rs.40,000/-, and also Rs.15,000/- towards funeral 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.The details of the enhanced compensation are as under:

Heads	***Award Amount (Rs.)***
Pecuniary loss of Income	10,47,132/-
Funeral Expenses	15,000/-
Loss of consortium to the first appellant	40,000 /-
Loss of love & Affection to the second appellant	40,000/-
Loss of estate	15,000/-
Total	11,57,132/-

Rounded off to **Rs.11,57,130/-**

12. Thus, the appellants/claimants are entitled to the enhanced compensation of Rs.11,57,130/-. It is made clear that for the enhanced amount of Rs.11,57,130/-, the interest rate of 7.5% shall be calculated from the date of filing of this appeal. The second respondent is directed to deposit the award amount within a period of six weeks from the date of copy of this judgement.

13.The Civil Miscellaneous Appeal is partly allowed. Consequently, connected miscellaneous petition is closed. No costs.

14. The second respondent/Insurance Company is directed to deposit the enhanced 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 Tribunal, in the same ratio as awarded by it, is directed to transfer the award amount along with accrued interest to the bank account of the appellants through RTGS within a period of two weeks thereafter.

15. Since the compensation amount now awarded is Rs.11,57,130/-, it is made clear that the claimants have to pay the appropriate Court fee in order to receive the enhanced award amount.

Index : Yes/No
Internet : Yes/No
gv

13.06.2023

A.A.NAKKIRAN.,J

gv

To

1.The Motor Accident Claims Tribunal/
(Chief Small Causes Court, Chennai)

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

C.M.A.No.1030 of 2014
and
MP.No.1 of 2014

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