IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.04.2023

CORAM

THE HON'BLE **MRS.JUSTICE R.KALAIMATHI**

C.M.A.No.2703 of 2014

1. K.Chengalvarayan

2. Hemalatha

3. Minor Hemavathi
   Represented by her father/
   next friend, 1st Petitioner K.Chengalvarayan ... Appellants

Vs.

1. V.Vinayagam

2. Shriram General Insurance Co. Ltd.,
   Shriram Transport Finance Company Limited,
   Vellore. ... Respondents

(1st respondent was set ex-parte before the Court below. On endorsement notice is dispensed with)

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the Judgement and Decree dated 07.11.2013 in M.C.O.P.No.22 of 2012 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge) Ranipet.

For Appellants : Mr.M.Sivakumar
For Respondents :
For R1 : Ex-parte
For R2 : Mr.J.Michael Visuvasam

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellants/claimants seeking enhancement of compensation granted by the Tribunal in the award dated 07.11.2013 made in M.C.O.P.No.22 of 2012, passed by the learned Motor Accident Claims Tribunal, Subordinate Judge Court, Tiruchengode.

2. The appellants/claimants are the husband and daughters of the deceased Mangammal who tragically met with an accident and died on 04.12.2011.

3. Facts of the case in brief as follows:-

On 04.12.2011 at about 12.15 P.M., while the deceased Mangammal who is the wife of the first appellant/claimant and mother of the second and third (minor) appellants/claimants was travelling along with her son-in-law in a Mini Tata Lorry bearing Registration No. TN 22 U 0677 from Sainampattadai Village towards Bangalore. While the said lorry was proceeding towards Chennai-Bangalore National Highway Road and between the Vaniyambadi-Krishnagiri Road, the driver of the said lorry lost control of the vehicle due to rash and negligent driving during night hours had hit the rear side of the container lorry near the petrol bunk of the lorry owners, as a result of which, the said Mangammal sustained grievous injuries and died on the spot. The appellants therefore filed the Claim Petition claiming a sum of Rs.7,00,000/- as compensation as against the owner of the offending vehicle namely the first respondent as well as the insurer of the offending vehicle namely the second respondent herein.

4. The second respondent/Insurance Company filed a detailed counter denying all the averments made in the Claim Petition and further stated that there was a wilful violation of policy condition, that the driver of the first respondent vehicle did not possess a valid driving license to drive the transport vehicle bearing Registration No.TN 22 U 0677 at the time of accident. The second respondent/Insurance Company further stated that the vehicle in which the deceased Mangammal and her son-in-law had undertaken traveling is only used for the purpose of

transportation of goods, therefore the first respondent committed breach of the policy condition, hence, the liability was only that of the first respondent/owner of the vehicle. The second respondent/Insurance Company denied the age, occupation and monthly income of the deceased Mangammal and prayed for dismissal of the Claim Petition.

5. Before the Claims Tribunal, the first appellant/first petitioner examined himself as P.W.1 and one Loganathan Eye Witness was examined as P.W.2 and Ex.P1 to Ex.P8 were marked. The second respondent was examined as R.W.1, the Legal Officer of the second respondent/Insurance Company and marked Ex.R1.

6. The Claims Tribunal, on the basis of both oral and documentary evidence on record held that the accident occurred due to the negligence of the driver of the first respondent. The Claims Tribunal further held that as there was a violation of the policy condition by the insured, the second respondent/Insurance Company was liable to pay the compensation to the appellant and to recover the same from the first respondent. The Claims Tribunal awarded a sum of Rs.3,71,000/- along with 7.5% interest.

7. Not satisfied with the amount of compensation awarded by the Tribunal, the appellants/claimants have preferred the above appeal.

8. The learned counsel for the appellants/claimants would strenuously argue that the monthly income fixed by the Tribunal is on the lower side. While calculating the income, future prospect was not taken into account and hence the appellants/claimants are seeking enhancement of compensation on the above said ground.

9. Per contra, the learned counsel for the second respondent/ Insurance Company would state that the first appellant/claimant is not a dependent of the deceased, therefore the Tribunal awarded for the deceased personal expenses 50% is to be deducted. More so, he would state that the pay and recovery ordered by the Tribunal be confirmed and would also state that the Tribunal after taking into consideration all oral and documentary evidence has granted a compensation of Rs.3,71,000/-, which is a reasonable one and it need not be interfered with.

10. Heard arguments of both the learned counsels. Perused the materials available on record.

11. The manner in which the accident had taken place is not in dispute. The accident was taken place on 04.12.2011. Taking into account the age details found in the postmortem certificate, age of the deceased was fixed as 45 years is not in dispute. The deceased Mangammal was stated to be a vegetable vendor and the Tribunal has fixed the income of the deceased at Rs.3,000/- per month.

12. In the present case taking into account of the age of the deceased, it is reasonable to fix the income of the deceased as Rs.5,500/- per month.

13. In the case of **Smt.Sarala Varma and Others vs. Delhi Transport Corporation and Another,** reported in 2009 (2) TN MAC 1 (SC), the Hon'ble Supreme Court has standardized the details of deduction for personal and living expenses as follows:-

"Deceased Married:
- 1/3rd, if number of dependant family members is 2 to 3"

14. In the case of **National Insurance Company Limited Vs Pranay Sethi and Others,** reported in 2017 (2) TN MAC 609 (SC), the Hon'ble Supreme Court has held that for Future Prospects if the person is self employed and who is under the age between 40-50 years, 25% of income fixed to be arrived for calculating the income.

15. In the present case on hand, the claimants are the husband and two daughters. Therefore for calculating loss of Income the following formula emerges:-

Monthly Income	:Rs.5,500/-
Add: ** Future Prospects at 25% (Rs.5,500/- x 25/100)	:Rs.1,375/-
	:Rs.6,875/-
Less: For Personal Expenses 1/3rd (Rs.6875/- x 2/3)	:Rs.4,583/-
Annual Contribution to the family (Rs.4,583/- x 12)	:Rs.54,996/-
* Multiplier 14(Rs.54,996/- x14)	:Rs.7,69,944/-

* Proper Multiplier of 14 is fixed by this court as per the decision of the Hon'ble Supreme Court in **Sarla Verma (Smt) and Others** Vs. **Delhi Transport Corporation and Another**, reported in (2009) 6 SCC 12.

** Future prospects is added by this Court at 25% as per the decision of the Hon'ble Supreme Court in **National Insurance Company Limited** Vs. **Pranay Sethi and Others**, reported in (2017) 16 SCC 680.

16. The award of the Tribunal in M.C.O.P.No.22 of 2012 is modified as follows:-

Sl. No.	**Head for Compensation**	**Amount awarded by the Tribunal (Rs.)**	**Amount awarded by this court (Rs.)**	**Award confirmed or enhanced or reduced or granted or set aside**
1	Loss of dependency	3,36,000/-	*7,69,944/-	enhanced
2	Loss of Consortium	10,000/-	10,000/-	confirmed
3	Loss of love and affection	20,000/-	20,000/-	confirmed
4	Funeral Expenses	5,000/-	5,000/-	confirmed
	Total	**3,71,000/-**	**8,04,944/- rounded off to Rs.8,05,000/-**	**Enhanced by 4,33,944**

*(Rs.5,500/-+25%-1/3x12x14 = Rs.7,69,944/-)

17. In the result,

i. The Civil Miscellaneous Appeal is partly allowed. No costs.
ii. The compensation awarded by the Claims Tribunal is enhanced from Rs.3,71,000/- to **Rs.8,05,000/-**
iii. The 2nd respondent / Insurance Company is directed to deposit the enhanced compensation amount ie., **Rs.8,05,000/-** (less the amount already deposited if any) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No.22 of 2012 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge) Ranipet, within a period of eight weeks from the date of receipt of a copy of this Judgment, at the first instance and recover the same from the first respondent.
iv. On such deposit being made, the first appellant is entitled to receive Rs.3,35,000/- and the second and third appellants are entitled to receive Rs.2,35,000/- each. The

appellants 1 and 2 are permitted to withdraw their share along with interest and cost, less any amount already withdrawn, by filing appropriate applications before the Tribunal. The 3rd appellant was aged about 13 years at the time of filing of the claim petition in 2012, since the 3rd appellant would have attained the age of majority. Therefore, she is permitted to withdraw her share along with interest and cost by filing appropriate application before the Tribunal. The first appellant is directed to pay the Court fee for the enhanced compensation amount, if required. The Tribunal below shall disburse the enhanced amount upon production of the certified copy showing proof of payment of Court fee by the first appellant.

18.04.2023

Index : Yes/No
Neutral Citation : Yes/No
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To:

The Motor Accidents Claims Tribunal
(Subordinate Judge) Ranipet.

R.KALAIMATHI, J.

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