IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 03.04.2023

Coram:

THE HONOURABLE MRS.JUSTICE N.MALA

C.M.A.No.856 of 2023

1.Aruldoss
2.Kanimozhi
3.Celin Shanthi
4.Mariya Louis

... Appellants

Vs.

1.Mohammed Intiyaz
2.Divisional Manager,
The New India Assurance Company Limited,
C.S.I.Building, 2nd floor, No.1, Officers Lane,
Vellore.

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 praying to enhance the award against the Judgment and Decree dated 27.11.2014, passed in M.A.C.T.O.P.No. 150 of 2013, on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Thiruvannamalai.

For Appellant : M/s.A.Subadra
For R-1 : Ex parte
For R-2 : Mr.P.Sankaranaraynan

JUDGMENT

The appeal is filed by the claimants challenging the Judgment and Decree dated 27.11.2014, passed in M.A.C.T.O.P.No. 150 of 2013, on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Thiruvannamalai.

2. The appeal is filed by the appellant/claimants seeking enhancement of compensation.

3. The claimants are the father, sisters and brother of the deceased Arul Antony Muthu, who died in a Motor accident which occurred on 14.03.2013.

4. According to the appellants, the deceased was aged about 36 years at the time of accident and was earning income of Rs.25,000/- per month, as owner cum driver of TATA ACE vehicle. The appellants herein are the legal heirs of the deceased and they have filed the claim petition claiming a sum of Rs.25,00,000/- as compensation.

5. Before the claims Tribunal, the 3rd claimant/ sister of the deceased examined herself as P.W.1 and 3 other witness were examined on the side of the

claimants/appellants and Ex.P.1 to P.16 were marked in support of their case. On the side of the respondents, neither any witness was examined nor any document was marked.

6. The claims Tribunal, on assessment of entire evidence on record, awarded a sum of Rs.9,68,000/- along with 7.5% interest.

7. The learned counsel for the appellants submitted that the Tribunal failed to note that the appellants were entitled to loss of consortium at Rs.40,000/- each. The counsel further submitted that the award of the Tribunal towards the head 'Funeral expenses and Transportation' was also on the lower side. The learned counsel further submitted that the appellants are entitled to future prospects.

8. The learned counsel for the second respondent on the other hand, submitted that except the evidence of 3rd appellant, there is no independent evidence to establish that the legal heirs were dependent on the deceased. The learned counsel therefore submitted that the Tribunal had rightly not taken the future prospects into consideration. As far as the claim towards loss of consortium, funeral expenses and Transportation etc. are concerned, the learned

counsel submitted that the award of the Tribunal was fair and reasonable and called for no interference in the appeal.

9. I have considered the rival submissions of both the counsels and perused the materials available on record.

10. It is seen that the second appellant herein was aged 22 years at the time of accident and she was married. The 4th appellant was major and he did not depose that he was dependent on the income of his deceased brother, so also, the father of the deceased had not deposed that he was dependent on the income of the deceased.

11. In the absence of any evidence that the claimants were dependent on the deceased's income, the Tribunal rightly did not take future prospects of the deceased into consideration. In view of the Judgment of the Hon'ble Supreme Court in the case of *Pranay Sethi* and *Magma General Insurance Co. Ltd Vs. Nanu Ram* reported in *2018 (18) SCC 130*. The father and siblings of the deceased who are the appellants/claimants are entitled to loss of consortium at Rs.40,000/- each. As far as the award towards funeral expenses and Transportation are concerned, I am of the view that the same can be enhanced

to Rs.15,000/- each. The appellants/claimants are further entitled to Rs.15,000/- towards loss of estate.

12. In view of the said discussion the award of the Claims Tribunal is modified as follows:-

S.No.	***Various Heads***	***Award of the Tribunal***	***Award of this Court***
1.	Loss of Income	Rs.7,68,000/-	Rs.7,68,000/-
2.	Funeral Expenses	Rs.5,000/-	Rs.15,000/-
3.	Loss of damages to vehicle	Rs.1,70,000/-	Rs.1,70,000/-
4.	Loss Consortium (4x40,000 each)	Rs.20,000/-	Rs.1,60,000/- Rs.40,000/- each
5.	Transportation expenses	Rs.5,000/-	Rs.15,000/-
6.	Loss of Estate	Nil	Rs.15,000/-
Total		Rs.9,68,000/-	Rs.11,43,000/- **enhanced amount Rs.1,75,000/-**

13. In the result the compensation is enhanced to Rs.11,43,000/- along with 7.5% interest. The claimants are not entitled to interest on the said amount for the delay period of 2700 days, as the delay was condoned on condition of forfeiture of interest.

14. I am of the view that the enhanced compensation of Rs.1,75,000/- should be taken by the first appellant/father of the deceased, as the other claimants have already been awarded reasonable share in the compensation

awarded by the Tribunal.

15. The second respondent Insurance company is directed to deposit the enhanced compensation along with 7.5% interest, less the amount already deposited, if any, within a period of four (4) weeks from the date of receipt of the copy of the Judgment. It is made clear that the appellants/claimants shall not be entitled to interest at 7.5% for the delay period of 2700 days in filing the appeal.

In the result, this Civil Miscellaneous Appeal is partly allowed. There shall be no order as to costs.

03.04.2023

dsn
Index:Yes/No
Speaking Order :Yes/No
Neutral Citation:Yes/No

To
1.The Chief Judicial Magistrate (Motor Accidents Claims Tribunal),
Thiruvannamalai.

2.The Section Officer,
V.R. Section,
High Court, madras.

N.MALA.J.,
dsn

C.M.A.No.856 of 2023

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