IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2023

CORAM :

THE HONOURABLE MR. JUSTICE A.A. NAKKIRAN

Civil Miscellaneous Appeal No. 4135 of 2019

Senbagavalli .. Appellant

Versus

1.Saravanan

2.The Manager
United India Insurance Company Limited
No.23/1, Sankagiri bye-pass Road
Pallipalayam, Tiruchengode Taluk
Namakkal District. .. Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the fair and decreetal order made in MCOP No.777 of 2016, dated 03.12.2018 on the file of the Motor Accident Claims Tribunal / Additional District Judge, Namakkal.

For Appellant : Mr. T.A. Srinivasan
for Mr. C. Thangaraju

For Respondents : Mr. J. Chandran - R2

JUDGMENT

This appeal has been filed by the claimant seeking enhancement of compensation under the impugned award dated 03.12.2018 passed by the Motor Accident Claims Tribunal / Additional District Judge, Namakkal in MCOP No.777 of 2016.

2. The Motor Accidents Claim Tribunal, under the impugned award, has directed payment of compensation of Rs.5,41,900/- together with interest and costs to the appellant/claimant which is detailed hereunder:

Heads	***Award Amount (Rs.)***
Loss of income	4,71,900/- (6500 + 10% = 7150 -1/2 = 3575 x 12 x 11)
Loss of Estate	15,000/-
Funeral expenses	15,000/-
Loss of consortium	40,000/-
Total	**5,41,900/-**

3. The accident occurred on 04.12.2015 at 7.30 p.m, at Periyamanali to Jaderpalayam Road, in front of Sivasakthi Electrical shop. The Velagoundampatti Police Station registered a case in Crime No.195 of 2015 under Sections 279 and 304(A) IPC. While the deceased Hussain was walking along the road, the rider of the two wheeler bearing Registration No.TN 28 T 9850 came behind him in a rash and negligent manner and hit against the deceased. Due to the accident, he sustained fatal injuries all over the body and died in the hospital**.** Thereafter, the claim petition was filed by the wife of the deceased, the claimant/appellant herein. The Tribunal adjudicated the issues with reference to the documents as well as the evidences produced by the respective parties and passed the award as tabulated hereinabove.

4. The learned counsel appearing for the appellant mainly contended that the deceased Selavarasu was working as collie in a Power Mill and earning a sum of Rs.15,000/- per month at the time of accident. But, the Tribunal has fixed a sum of Rs.6,500/- as monthly income of the deceased, which is meagre. The Tribunal ought to have fixed atleast a sum of

Rs.12,000/- as monthly income of the deceased. He further contended that while the appellant alone is the dependant of the deceased, the Tribunal has erred in deducting 1/2 towards personal expenses of the deceased instead of 1/3 especially when the deceased had spent most of the earnings towards the family only. Hence, he prayed for enhancement of compensation.

5. The learned counsel for the 2nd respondent insurance company contended that the appellant has not let in any material evidence to prove that the deceased was earning a sum of Rs.15,000/- as monthly income at the time of accident. In the absence of material evidence, the Tribunal fixed a sum of Rs.6,500/- as monthly income, which is not meagre. The Tribunal has rightly awarded a reasonable compensation and therefore, there is no need to interfere with the said finding of the Tribunal. Thus, the award given by the Tribunal is to be confirmed and the appeal is to be dismissed.

6. I have heard the learned counsel for the appellant as well as the second respondent and perused the entire materials on record.

7. From the materials available on record, it is seen that the appellant has contended that deceased was a coolie in a power mill and was earning a sum of Rs.15,000/- per month at the time of accident. But, no proof of income has been filed by the appellant/claimant. In the absence of material evidence, the Tribunal fixed a sum of Rs.6,500/- as monthly income of the deceased, who died in the accident that had occurred in the year 2015, which is meager. However, considering the rise in cost of living and other related factors, it would be appropriate to fix a sum of Rs.10,000/- towards monthly income of the deceased.

8. The main contention of the appellant is that while the appellant alone is dependent of the deceased, the Tribunal has committed an error in deducting 1/2 towards personal expenses of the deceased. Since the deceased was a married man and the appellant was fully depending on the deceased husband, it would be appropriate to deduct 1/3rd towards the personal expenses of the deceased instead of 1/2, as per *Sarla Verma* and *Praney Sethi case*. This Court finds much force in the submission of the counsel for the appellant. It is an admitted fact that the appellant-claimant

is the only legal heir to succeed to the estate of the deceased. The deceased is the husband of the claimant. As per the decision of the Honourable Supreme Court in *Pranay Sethi* case, the deduction towards personal expenses and living expenses of the deceased should be one-third where the number of dependent family members is 2 to 3. In the present case, except the appellant-claimant, there is no other legal heir left behind by the deceased on his death. Therefore, the Tribunal ought not to have deducted 50% as in the case of a bachelor, instead it ought to have deducted only 1/3rd of the income. Accordingly, the loss of income is modified from Rs.4,71,900/- to Rs.9,68,000/- /- as detailed below:

10000 + 10% x 12 x 11 = Rs.14,52,000/-

(-) 1/3rd deduction = Rs.9,68,000/-

9. In all other respects, the amount awarded by the Tribunal under other heads are confirmed. Thus, this Court is inclined to modify the compensation granted by the Tribunal as detailed hereunder:

Heads	***Amount awarded by the Tribunal (Rs.)***	***Award Amount by this Court (Rs.)***
Loss of Income	4,71,900/- (6500 + 10% = 7150 -1/2 = 3575 x 12 x 11)	10,000 + 10% x 12 x 11 (-) 1/3 = Rs.9,68,000/-
Consortium	40,000/-	40,000/-
Funeral Expenses	15,000/-	15,000/-
Loss of Estate	15,000/-	15,000/-
Total	5,41,900/-	10,38,000/-

10. In the result,

(i) This appeal is allowed and the compensation awarded by the Tribunal is enhanced from Rs.5,41,900/- to Rs.10,38,000/- with interest at the rate of 7.5% p.a. from the date of claim petition till the date of realisation.

(ii) The 2nd respondent Insurance Company is directed to deposit the modified award amount i.e, Rs.10,38,000 /- along with interest at the rate of 7.5% per annum and costs, after deducting the amount already deposited, if any, to the credit of MCOP.No.777 of 2016 within a period of six weeks from the date of receipt of a copy of this Judgment.

(iii) On such deposit being made, the Tribunal is directed to transfer the award amount to the bank account of the appellant/claimant along with accrued interest through RTGS within a period of two weeks thereafter. No costs.

28.03.2023

Index:Yes/No
Speaking/Non-speaking Order

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To

1. The Additional District Judge,
(Motor Accidents Claims Tribunal),
Namakkal.

2.The Section Officer
V.R.Section, High Court of Madras.

A.A.NAKKIRAN, J.

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C.M.A.No.4135 of 2019

28.03.2023