IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.10.2023

CORAM

MR.JUSTICE N.SESHASAYEE

C.M.A.No.2512 of 2023

1.M.Nazimunnisha Begum

2.M.Mohammed Eliyas

3.M.Alima Banu

4.M.Mohammed Azarudeen

... Appellants

Vs.

1.T.Thanga Mariappan

2.The HDFC ERGO General Insurance
Company Limited, (HUBB)
No.528, Anna Salai,
Chennai-2. ... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, seeking to enhance the amount awarded in M.C.O.P.No.07 of 2020, dated 18.11.2022 on the file of the Motor Accident Claims Tribunal, (III Additional District and Sessions Court), Tiruvallur at Poonamallee.

For Appellants : Mr.K.Varadha Kamaraj

For Respondents : Mr.S.Arunkumar for R2

JUDGMENT

This appeal is laid by the claimants challenging essentially the notional income fixed for the victim of a fatal road accident that took place on 21.11.2019 at around 16.15 p.m and the deceased was 59 years at the time of the accident. The Tribunal had fixed the notional income at Rs.10,000/- and added 10% towards future prospects and made it as Rs.11,000/- and applied the multiplier of 9 and deducted 50% towards the personal expenditure of the victim and arrived a net loss of dependency at Rs.5,94,000/-. After awarding compensation on other conventional heads, the Tribunal had passed an award of Rs.8,08,000/- payable with interest at 7.5% per annum.

2.Since the first respondent remained ex parte before the Tribunal, notice to the first respondent is dispensed with.

3.Mr.K.Varadha Kamaraj, the learned counsel for the appellants submitted that the Tribunal ought to have deducted only 1/4th towards the personal expenditure of the victim, but it had deducted 50%, which is untenable. It has also fixed the notional income at Rs.10,000/- per month, which is unreasonable.

4.Per contra, Mr.S.Arunkumar, the learned counsel appearing for the second respondent, on instructions, submitted that all the claimants, except the widow, are the children of the victim and they are all in their mid-30s. They were married long prior to the date of accident and can no longer be considered as dependents. The learned counsel for the second respondent added that the insurance company has deposited the entire amount which has been awarded by the Tribunal.

5.Inasmuch as only the notional income is fixed for the victim, this Court considers that an elaborate discussion on the facts is not required. The material provided in the award itself is adequate, as the award appears to be well considered.

6.Having said that, this Court does consider that Rs.10,000/- is on the lower side and Rs.12,000/- would be a fair enough amount. If fixed at this amount, and applying the same methodology as adopted by the Tribunal, then the total loss of dependency would be Rs.7,12,800/-. This Court considers it as fair and reasonable under such circumstances.

7.Based upon the submission of the learned counsel for the second respondent that the insurance company has already deposited the entire award amount, this Court directs the insurance company to deposit another Rs.1,18,800/- which represents the enhanced portion of the award as per the order now passed. This amount is required to be deposited with interest at 7.5% per annum from the date of the claim petition till the date of deposit, less the interest for 109 days for the delay in filing the appeal, within a period of six (6) weeks from the date of receipt of a copy of this order. It is underscored that only the first appellant is entitled to withdraw the entire enhanced portion of the award amount.

8.The Civil Miscellaneous Appeal stands partly allowed. No costs.

17.10.2023

Anu
Index: Yes/No
Speaking Order / Non-Speaking Order
Neutral Citation: Yes / No

To

The III Additional District and Sessions Court),
Tiruvallur at Poonamallee

N.SESHASAYEE, J.

Anu

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