IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.04.2023

CORAM

THE HONOURABLE MR. JUSTICE **A.A.NAKKIRAN**

C.M.A. No.1004 of 2017

1. G.Velankanni
2. G.Sakthivel
3. G.Vinoth Kumar
4. G.Prasanth
5. P.Lakshmi ... Appellants

Vs.

1.R.Lalith Kumar
2. M/s.National Insurance Co.Ltd.,
No.751, Anna Salai,
Chennai – 600 002. ... Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1989, against the judgment and decree dated 28.08.2014 passed in MACT.O.P. No.5715 of 2012 on the file of the III Small Causes Court (Motor Accidents Claims Tribunal) Chennai.

For Appellants	:	Mr.M.Mahendran for N.M.Muthurajan
For Respondents 2	:	Mr.J.Michael Visuvasam
R1	:	Notice not claimed

JUDGMENT

This appeal has been preferred by the claimants against the judgment and decree dated 28.08.2014 MACT.O.P. No.5715 of 2012 on the file of the III Small Causes Court (Motor Accidents Claims Tribunal) Chennai.

2. The claimants are the wife, sons and mother of the deceased respectively. The case of the claimants is that while the deceased was riding the motor cycle bearing Reg.No.TN-22-CY-9250 from Chittalapakkam to Medavakkam, another motor cycle bearing Reg.No.TN-07-L-9659 came in a rash and negligent manner from the opposite direction and dashed against the deceased motor cycle and the deceased sustained grievous injuries and died later. The first respondent being the owner of the vehicle and the second respondent being the insurance company are jointly and severally liable to pay compensation. Claiming a compensation of Rs.14,00,000/- from the respondents, the claimants have filed a claim petition before the Motor Accidents Claims Tribunal, Chennai.

3. During trial, in order to prove the case of the claimants, they have examined three witnesses viz., P.W.1 to P.W.3 and marked five documents viz., Exs.P1 to P5. On the side of the respondents, two witnesses were examined viz., R.W.1 and R.W.2 and marked three documents viz., Exs.R1 to R3. The Tribunal, after considering the pleadings, oral and documentary evidence, came to the conclusion that the accident had occurred due to rash and negligent driving by the driver of the vehicle belonging to the 1st respondent. As the first respondent's vehicle was insured with the second respondent insurance company, the Tribunal held that the 2nd respondent-Insurance Company is liable pay a sum of Rs.7,67,000/- as compensation to the claimants with interest at the rate of 7.5% per annum from the date of numbering the petition till the deposit of compensation.

4. Not being satisfied with the amounts so awarded by the Tribunal, the appellants / claimants has come out with the present appeal seeking enhancement of compensation.

5. The learned counsel for the appellants submitted that the Tribunal awarded a sum of Rs.25,000/- to the wife of the deceased towards loss of

consortium which is meagre. Since the age of the deceased at the time of accident is 45 years, the compensation towards loss of consortium to the wife should be enhanced. The learned counsel further submitted the Tribunal has only awarded a sum of Rs.50,000/- to the sons of the deceased towards loss of love and affection which is too low. Though the deceased is a skilled welder, the Tribunal had fixed the monthly income of the deceased at Rs.6,000/- which is very low. Now-a-days, a skilled welder would get Rs.750/- per day as wage and hence the monthly income of the deceased has to be enhanced. The learned counsel further submitted that while calculating the pecuniary benefits, the Tribunal had deducted 1/3rd of the income towards the personal expenses which is not correct. Since the deceased had three sons, the calculation should be done by deducting 1/4th of the income. The Tribunal had also failed to award any compensation under the head of future prospects and loss of estate. Hence, the learned counsel prays to enhance the amount awarded by the Tribunal.

6. The learned counsel for the second respondent / insurance company submitted that the appellants have not produced any material evidence to prove the deceased was earning a sum of Rs.750/- per day and in the absence of any

material evidence with regard to income, the Tribunal fixed a sum of Rs.6,000/- per month as notional income of the deceased, which is excessive. Since the sons of the deceased are self earning and not dependent on their father, the Tribunal had rightly deducted 1/3rd of the income towards persons expenses of the deceased. The amounts awarded by the Tribunal under various heads are not meagre and prayed for dismissal of the appeal.

7. Heard the learned counsel on both sides and perused the materials available on record.

8. It is the contention of the appellants that the deceased was working as a Welder and was earning Rs.750/- per day, however they failed to substantiate the said contention. But considering the age of the deceased, avocation and the family dependents, this Court is of the view that the notional income of the deceased can be fixed at Rs.7,500/-. The Tribunal had rightly adopted the multiplier method and considering the age of the deceased, had rightly fixed the multiplier as 14. However, while calculating the pecuniary loss, the Tribunal had deducted 1/3rd amount of the notional income. Since the deceased had three sons, the Tribunal should have deducted 1/4th of the income. Further,

the Tribunal had failed to consider the future prospectus of the deceased. It would be appropriate to add 25% towards future prospects. By considering the aforesaid points, the loss of pecuniary benefits and dependency of the deceased is modified to Rs.11,81,250/- ((Rs.7500 x 3/4 x 12 x 14) + 25%). Considering the number of dependents in the deceased family, each son is entitled to at least Rs.40,000/-. Hence the compensation towards loss of love and affection is enhanced from Rs.50,000/- to Rs.1,60,000/- . Considering the age of the deceased and loss of moral support of husband, the compensation towards loss of consortium to the first petitioner granted by the Tribunal is meagre and the same is enhanced from Rs.25,000/- to Rs.40,000/-. The Tribunal had failed to consider the loss of estate of the deceased. Hence, a sum of Rs.15,000/- can be granted for the loss of estate of the deceased. The Tribunal had granted Rs.20,000/- towards funeral expenses which is excessive and the same is reduced to Rs.15,000/-. Thus the compensation awarded by the Tribunal is modified as under:

Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of consortium to the first petitioner	25,000/-	40,000/-	Enhanced
2.	Loss of love and affection (2nd to 5th petitioners)	50,000/-	1,60,000/-	Enhanced
3.	Loss of Pecuniary benefits	6,72,000/-	11,81,250/-	Enhanced
4.	Funeral Expenses	20,000/-	15,000/-	Reduced
5.	Loss of estate of the deceased	0	15,000/-	Enhanced
	Total	**Rs.7,67,000/-**	**Rs.14,11,250/-**	**-**

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.7,67,000/- is hereby enhanced to Rs.14,11,250/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd respondent-Insurance Company is directed to deposit the award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of MACT O.P.No.5715 of 2012 on the file of the III Small Causes Court (Motor Accidents Claims Tribunal) Chennai.. On such deposit, the appellants

are permitted to withdraw the award amount now determined by this Court, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. No costs.

25.04.2023

Internet:Yes
Index:Yes/no
Speaking/Non speaking order
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To:

The III Small Causes Court (Motor Accidents Claims Tribunal),

Chennai.

A.A.NAKKIRAN, J

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C.M.A. No.1004 of 2017

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