IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2023

CORAM:

THE HON'BLE MR.JUSTICE A.A.NAKKIRAN

C.M.A.No.1415 of 2017

1.Smt.Manju
2.Minor Sugashini
3.Minor Karan
Minors represented by their next
Friend and Guardian mother Smt.Manju
4.Smt.Rajathi
5.Vanitha ... Appellants

Vs.

1.P.Varadharajan

2.M/s.National Insurance Co.Ltd
LRN Colony, Saradha College Main Road,
Hasthampatty,
Salem – 7. ...Respondents

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 26.11.2015 made in M.C.O.P.No.219 of 2015 on the file of the Motor Accidents Claims Tribunal, III Additional District Judge, Salem.

For Appellants : M/s.T.Ananthasekar

For R1 : No appearance
For R2 : Mr.Arun Kumar

ORDER

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 26.11.2015 made in M.C.O.P.No.219 of 2015 on the file of Motor Accident Claims Tribunal, III Additional District Judge, Salem.

2.The appellants are claimants in M.C.O.P.No.219 of 2015 on the file of Motor Accident Claims Tribunal, III Additional District Judge, Salem. They filed the said claim petition claiming a sum of Rs.,25,00,000/- as compensation for the death of one Manikandan, who died in the accident that took place on 21.10.2014. The appellants 1 to 5 are wife, children, mother and sister of the deceased Manikandan.

3.According to the appellants/claimants, on the date of accident i.e., on 21.10.2014, at about 14.00 hours, the deceased was riding his motorcycle bearing Registration No.TN.30-AA-3922 on the extreme left of Salem to Mallur road near Poimankaradu Bus stop, the driver of the Bus bearing Registration No.T.N.54-A-5656, drove the bus in a rash and negligent manner dashed the motorcycle driven by the said Manikandan and caused the accident. In the accident, the deceased Manikandan sustained grievous injuries and died at the Hospital. Therefore, the appellants/petitioners/claimants filed the above claim petition claiming compensation for his death against the respondents 1 and 2, who are the owner of bus and Insurance Company/insurer of the said bus.

4.The 1st respondent, owner of the bus remained ex-parte before the Tribunal.

5.The 2nd respondent/Insurance Company filed counter statement denying that averments made in the claim petition and stated that the age, income and occupation of the deceased are not admitted. The appellants/ claimants are not the legal heirs of the deceased Manikandan.

The appellants are not the dependents of the deceased. The amount of the compensation claimed in various heads are exaggerated and very high. In fact, the driver of the bus drove the same slowly and carefully and deceased alone was riding his two wheeler in a high speed and caused the accident. Since, the deceased was negligent, the 2nd respondent/Insurance Company is not liable to pay any compensation. In any event, the compensation claimed by the appellants is excessive and prayed for dismissal of the claim petition.

6.Before, the Tribunal, 4th appellant/mother of the deceased examined herself as P.W.1, one Krishnakumar, eye-witness to the accident was examined as P.W.2 and 13 documents were marked as Exs.P.1 to P.13. The 2nd respondent/Insurance Company did not let in any oral and documentary evidence.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the 1st respondent, the driver-cum-owner of the offending vehicle and directed the 2nd respondent/Insurance Company being insurer of the said vehicle to pay a sum of Rs.9,74,000/- (Rupees Nine Lakhs Seventy Four Thousand only) as compensation to the appellants.

8.Not being satisfied with the amounts awarded by the Tribunal, the appellants have come out with the present appeal seeking enhancement of compensation.

9.The learned counsel appearing for the appellants contended that the deceased was aged 24 years at the time of accident, he was an agriculturist and was earning a sum of Rs.15,000/- per month. The Tribunal without considering the claim has fixed the monthly income of the deceased as Rs.6,000/- per month. The Hon'ble Apex Court in (***Syed Sadiq Vs. Divisional Manager, United India Insurance Co. Ltd.,***) a case reported in ***2014 (1) TN MAC 459*** has fixed monthly income of a vegetable vendor as Rs.6,500/- in absence of proof of income.

He further states that as per the Judgment of the Hon'ble Apex Court reported in **2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and others],** future prospects may be taken as 40% on the actual income of the deceased. The Tribunal erred in made deduction towards personal and living expenses of the deceased. The Tribunal made a deduction of 1/3rd towards personal and living expenses, the deduction towards personal expenses may be taken as 1/4 in stead of 1/3. The compensation awarded by the Tribunal towards Loss of Consortium is meagre, the loss of consortium has to be given as Rs.40,000/- each for the appellants/claimants 1 to 4. The Tribunal did not award any compensation towards loss of estate. As per the **[National Insurance Co. Ltd., Vs. Pranay Sethi and others], (cited supra)** a sum of Rs.15,000/- may be granted on the head of loss of estate and prayed for enhancement of compensation.

10.The learned counsel for the appellants also relied upon the Judgment of ***National Insurance Company Limited Vs. Pranay Sethi***

and others reported in ***CDJ 2017 SC 1220.*** The relevant portions are extracted hereunder:-

> *"61...(iii) While determining the income an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30% if the age of the deceased was between 40 to 50 years. In the case of deceased was between the age of 50 to 60 years, the addition should be 15%. Actual Salary should be read as actual salary less tax.*
>
> *(iv) In case the deceased was self – employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component."*

11.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the notional income fixed by the Tribunal is not meagre. The total compensation awarded by the Tribunal is not meagre. The appellants have not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

12.Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the 2nd respondent/Insurance Company and perused the entire materials available on record.

13.From the materials on record, it is seen that it is the contention of the appellants that the driver of the bus bearing Registration No.TN.54-A-5656 belonging to the 1st respondent drove the same in a rash and negligent manner, dashed against the motor cycle driven by the deceased Manikandan and thus the accident has occurred. Due to the injuries sustained in the accident, the said Manikandan died. To substantiate their claim, the appellants 1 to 5 examined one Krishnakumar, eyewitness to the accident as P.W.2. The 2nd respondent/Insurance Company did not examine any eye-witness or owner of the vehicle bearing Registration No. TN.54-A-5656 to prove their case. The Tribunal considering the evidence of P.W.2, and the documents filed by the appellants, held that accident has occurred only due to rash and negligent driving by the driver of the bus bearing Registration No. TN.54-A-5656, directed the respondents to pay the compensation to the appellants. There is no error in the said finding of the Tribunal warranting interference by this Court.

14.As far as quantum of compensation is concerned, it is the case of the appellants that the deceased Manikandan was an Agriculturist, at the time of accident, he was earning a sum of Rs.15,000/- per month. They have not filed any document to prove the income of the deceased. Hence, the Tribunal has fixed the monthly income of the deceased as Rs.6000/- which is not correct. The Hon'ble Apex Court in (***Syed Sadiq Vs. Divisional Manager, United India Insurance Co. Ltd.,***) a case reported in ***2014 (1) TN MAC 459*** has fixed monthly income of a vegetable vendor as Rs.6,500/- in absence of proof of income. In view of the above, it would be just and proper to fix a sum of Rs.6,500/- per month as notional income of the deceased. The Tribunal has failed to grant any enhancement towards future prospects. As per the judgment of the Hon'ble Apex Court reported in **2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and others],** the appellants are entitled to 40% enhancement towards future prospects, as the deceased was self employed. There are five dependants of the deceased. The Tribunal has deducted 1/3rd towards personal expenses, which is not correct, the deduction towards personal expenses should be taken as 1/4 instead of 1/3. The deceased was aged 24 years at the time of accident as per Ex.P2/post-mortem certificate. The Tribunal following the judgment of the Hon'ble Apex Court reported in **2009 (2) TNMAC 1 SC (Sarla Verma and others vs. Delhi Transport Corporation and another),** has rightly applied multiplier '18'.

15.Thus, by fixing a sum of Rs.6,500/- per month as notional income of the deceased, granting 40% enhancement towards future prospects, and deducting 1/4th towards personal expenses. Hence, the compensation awarded by the Tribunal towards Loss of Dependency is modified to Rs.14,74,200/- (Rs.6,500/- + 2600 [Rs.6,500/- X 40%] X 3/4 X 12 X 18]. The Tribunal has awarded a sum of Rs.50,000/- towards Loss of Consortium, which is not correct. As per the Judgment of the Hon'ble Apex Court reported in **2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and others],** the 1st appellant only is entitled to a sum of Rs.40,000/- toward Loss of Consortium. Hence, compensation awarded under Loss of Consortium is reduced from Rs.50,000/- to Rs.40,000/-. A sum of Rs.20,000/- awarded by the Tribunal towards Transport Charges and Funeral Expenses to the appellants is excessive. Hence, the amount granted for Transport Charges and Funeral Expenses is reduced from Rs.20,000/- to Rs.15,000/-. A sum of Rs.40,000/- awarded by the Tribunal towards Loss of Love and affection is meagre. The appellants 2 to 4 who are the children and mother of the deceased are entitled to Rs.1,20,000/- (Rs.40,000/- each) towards Loss of Love and Affection. Hence, the compensation awarded towards loss of love and affection is enhanced from Rs.40,000/- to Rs.1,20,000/-. The Tribunal has not awarded any amount towards Loss of Estate. Hence, a sum of Rs.15,000/- is awarded towards Loss of Estate. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Loss of dependency	8,64,000/-	14,74,200	Enhanced
2.	Loss of consortium to the first appellant	50,000/-	40,000	Reduced
3.	Transport charges and Funeral Expenses	20,000/-	15,000/-	Reduced
4.	Loss of love	40,000/-	1,20,000/-	Enhanced

	and affection			
5.	Loss of estate	Nil	15,000	Granted
	Total	**9,74,000/-**	**16,64,200/-**	**Enhanced by Rs.6,90,200/-**

16.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.9,74,000/- is hereby enhanced to Rs.16,64,200/- together with interest at the rate of 7.5% per annum (excluding the default period, if any) 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 eight weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant 1, 4 and 5 are permitted to withdraw their respective share of the award amount now determined by this Court, as per the apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn. The share of the minors/appellants 2 and 3 is directed to be deposited in any one of the Nationalised Banks till the minors attain majority. The 1st appellant being the mother of the minor appellants 2 and 3 is permitted to withdraw the accrued interest once in three months for the welfare of the minors. The appellants are directed to pay the necessary Court fee on the enhanced award amount, if any. No costs.

04.01.2023

Index : Yes/No
Internet : Yes/No
Neutral citation
case : Yes/No
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To
1.The III Additional District Judge,
Motor Accident Claims Tribunal
Salem

2.The Section Officer
VR Section Section
High Court of Madras

A.A.NAKKIRAN,J.

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C.M.A.No.1415 of 2017

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