IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 30.06.2023

Coram:

THE HONOURABLE MRS.JUSTICE N.MALA

CMA.No.1036 of 2022

1.K.Uma
2.K.Sudhakar
3.K.Mageshwaran

...Appellants

Vs.

1.C.Singaravelu

2.The Manager,
Oriental General Insurance Company Limited,
Motor Third Party Claims Office,
Oriental House, 2nd Floor, No.216,
Prakasam Salai, Broadway,
Chennai-600 002.

...Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 challenging the Judgment and Decree dated 05.08.2019 made in M.C.O.P.No.791 of 2016 on the file of Motor Accident Claims Tribunal (Additional District Court (Fast Track Court), Kanchipuram.

For Appellants : Mr.K.Varadha Kamaraj

For R-1 : Mr.R.Vivekanathan

For R-2 : Mr.N.Sampath

JUDGMENT

This appeal is filed challenging the Award and Decree passed in M.C.O.P.No.791 of 2016 on the file of Motor Accident Claims Tribunal (Additional District Court (Fast Track Court), Kanchipuram.

2. The appeal is filed by the claimants for enhancement of compensation.

On 16.02.2016, while the deceased was riding his Hero Honda Splendor motor cycle, the Maruthi Swift car belonging to the first respondent, driven by its driver in a rash and negligent manner dashed against the deceased's motor cycle from behind. Due to the impact of the accident, the deceased sustained grevious injuries and later succumbed to the same on 24.03.2016.

3. According to the claimants, the deceased was aged 57 years at the time of accident, was employed as an Engineer in Southern Railways

and drawing a salary of Rs.50,395/- per month. The claimants hence filed the claim petition claiming a sum of Rs.70,00,000/- as compensation.

4. The 1st respondent remained ex-parte and the claim petition was contested by the 2nd respondent/ Insurance Company. The 2nd respondent/ Insurance Company denied all the averments made in the claim petition apart from disputed the negligence, liability and quantum.

5. Before the Claims Tribunal, the claimants examined 3 witnesses and marked Ex.P.1 to Ex.P.19 in support of their claim. On the side of the respondent no evidence either oral or documentary was adduced.

6. The Claims Tribunal on an assessment of the entire evidence on record, returned a finding of negligence against the driver of the first respondent, assessed the compensation at Rs.26,24,416/- along with 7.5% interest and mulcted the liability on the second respondent/Insurance company. Not satisfied with the award passed by the Claims Tribunal, the claimants have preferred the above appeal.

7. The learned counsel for the appellants submitted that the Tribunal erred in fixing the salary of the deceased at Rs.30,850/- per month, instead of taking the gross salary of Rs.50,395/- per month as evidenced by Ex.P.11, the salary certificate. The learned counsel further submitted that the Tribunal failed to award any compensation towards love and affection to the son's of the deceased. The learned counsel therefore submitted that the compensation awarded by the Tribunal is erroneous and the same deserves to be enhanced.

8. The learned counsel for the second respondent/Insurance company on the other hand, relying on the Judgment of *Gauhati* High Court in the case of *The Orinetal Insurance Co. Ltd. vs. SMTI CHAMPABATI RAY and ors.* reported in *SCC OnLine Gau 4489* , submitted that no interest could be awarded for future prospects as the same related to income payable in furture. As regards the income assessed by the Tribunal on the basis of net salary instead of gross salary, the learned counsel for the second respondent/Insurance company fairly submitted that only gross

salary could be taken and not net salary.

9. I have heard both the learned counsels and have perused the materials placed on record.

10. It is seen from Ex.P.11, the salary certificate of the deceased, that deceased was drawing a gross salary of Rs.50,395/- per month and after deduction of an amount of Rs.19,545/-, the deceased received a net salary of Rs.30,850/- per month. The Claims Tribunal while computing loss of earning adopted the net salary instead of gross salary. In my view, the Tribunal erred in adopting the net salary instead of gross salary. It is by now well settled that in computing the compensation amount, the gross income less the income tax payable has to be taken and not the net income. It is fairly submitted by the learned counsel for the appellants that the gross income has to be taken after deducting the Income Tax. The gross income of the deceased was Rs.50,395/- as per Ex.P.11 the salary certificate. 15% (Rs.7,559/-) of gross income is added towards future prospects and total annual income is arrived at Rs.6,95,448/- (57,954 x 12= 6,95,448/-). Upto

Rs.2,50,000/- is non-taxable income, therefore Rs.2,50,000/- is deducted from the income of Rs.6,95,448/- (Rs.6,95,448 – 2,50,000 = 4,45,448/-) Taxable income of the deceased i.e Rs.4,45,448/- and 10% is deducted towards income tax (i.e) Rs.44,544.8/- is the tax payable. (Rs.4,45,448 x 10/100 = 44,544.8/-). After deducting income tax, the income of deceased is arrived at Rs.6,50,903.2/- (6,95,448 – 44,544.8 = 6,50,903.2/-). 1/3 is deducted towards deceased's personal expenses and the multiplier '9' appropriate to the age of the deceased is adopted. Therefore the loss of income of the deceased is arrived at Rs.39,05,419.2/- (Rs.6,50,903.2 x 9 – 1/3 = Rs.39,05,419.2/-).

11. The learned counsel for the appellant is justified in his submission that the Tribunal ought to have awarded a sum of Rs.40,000/- each to the sons of the deceased towards loss of love and affection. Therefore Rs.80,000/- is awarded to the sons of the deceased towards loss of love and affection.

12. The submission of the learned counsel for the second respondent that the claimants would not be entitled to interest on future income, because the same was payable only in future, in my view cannot be accepted. The learned counsel relied on the Judgment of the*Gauhati* High Court in support of the said submission. The Hon'ble Supreme Court in *Pranay sethi's* case reported in *2017 (16) SCC 680* has elaborately dealt with the issue of adding future prospects to the monthly income of the deceased. In the light of the binding Judgment of the Supreme Court, I am not inclined to accept the Gauhati High Court Judgment, which is only persuasive. Also, the Hon'ble Supreme Court in several Judgments subsequent to *Pranay Sethi's* case has awarded compensation without deducting the interest towards furture prospects. Therefore the contention of the learned counsel for the second respondent/Insurance company is rejected and the award of the Tribunal is modified as follows:

S.No	***Various Heads***	***Award by Tribunal (amount in Rs.)***	***Award by this Court (amount in Rs.)***
1.	Loss of Income	25,54,416/-	39,05,419.2/-
2.	Funeral expenses	15,000/-	15,000/-

S.No	Various Heads	Award by Tribunal (amount in Rs.)	Award by this Court (amount in Rs.)
3.	Loss of Consortium	40,000/-	40,000/-
4.	Loss of Estate	15,000/-	15,000/-
5.	Loss of love and affection	Nil	80,000/- (40,000 (each) x 2)
Total		26,24,416/-	40,55,419.20/- **(rounded off to Rs.40,55,420/-)**

13. In the light of the above discussion, the claimants are entitled to compensation of Rs.40,55,419.20/- rounded off to Rs.40,55,420/- along with 7.5% interest.

14. The second respondent/Insurance company is directed to deposit the enhanced compensation of Rs.40,55,420/- along with 7.5% interest from the date of claim petition till the date of deposit, less the amount, if any, already deposited within a period of eight (8) weeks from the date of receipt of copy of this Judgment. On such deposit being made, the claimants are entitled to withdraw the same. The apportionment of compensation shall be as fixed by Claims Tribunal.

15. It is seen that this Court in C.M.P.No. 4267 of 2022 vide order dated 18.04.2022, condoned the delay of 733 days in filing C.M.A.SR. No.117946 of 2021, on condition that the claimants would not be entitled to interest for the delay period of 733 days. It is therefore made clear that the claimants are not entitled to interest for the delay period of 733 days.

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

30.06.2023

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

To

The Additional District Judge (Fast Track Court),
Motor Accident Claims Tribunal,
Kanchipuram.

Copy to
The Section Officer,
V.R. Section,
High Court, Madras.

N.MALA.,J.

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