THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.07.2023

CORAM:

THE HONOURABLE MR JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MRS JUSTICE R.KALAIMATHI

C.M.A.No.1556 of 2023

1.Priya

2.Gilpat

3.Yona (minor)
rep. By his mother 1st petitioner, Priya ...Appellants

Vs.

1.K.Latha

2.The New India Assurance Co. Ltd.,
Motor III Party Claims Office,
No.232, N.S.C. Bose Road,
Bombay Mutual Building,
6th Floor, Chennai – 600 101. ...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the order and decreetal order dated 26.11.2021 in M.C.O.P.No.1985 of 2018 on the file of the Motor Accident Claims Tribunal, II, Court of Small Causes, Chennai.

For Appellants : Mr.J.Mahalingam

For Respondents : Mr.J.Chandran for R2
R1 – Notice dispensed with

JUDGMENT

(Judgment of the Court was made by R.SUBRAMANIAN, J.)

Considering the fact that the scope of the appeal is very narrow, the appeal itself is taken up for disposal with the consent of the learned counsel for the parties.

2.This appeal is directed against the award in M.C.O.P.No.1985 of 2018 on the file of the Motor Accident Claims Tribunal, Chennai, granting a sum of Rs.13,44,700/- for the death of one Stephen Raj, in a road accident that occurred on 24.02.2018.

3.According to the claimants, the accident occurred due to the rash and negligent driving of the driver of the lorry bearing Registration No.TN-12-S-7081, which came from behind and hit against the motor cycle.

The claimants also contended that the deceased, who worked as AC Mechanic was earning about Rs.12,000/- per month and he was 18 years old at the time of the accident. The claimants made a claim for a sum of Rs.40,00,000/-.

4.The claim was resisted by the Insurance Company, contending that the rider of the motor cycle was a minor and unlicensed person. It is because of the negligence of the rider, the accident had occurred and hence, Insurer of the lorry cannot be mulcted with the liability. It also termed the compensation claimed as excessive.

5.The Tribunal, on a consideration of the evidence found that the lorry driver was responsible for the accident to a larger extent and it fixed contributory negligence on the part of the two wheeler rider at 15%. Having held so, the Tribunal worked out the compensation by taking the monthly income at Rs.10,000/-. Adding 40% towards future prospects, deducting 50% towards personal expenses, the Tribunal arrived at the loss of dependency at Rs.15,12,000/-. It also awarded a sum of Rs.15,000/- each for loss of estate and funeral expenses and Rs.40,000/- for loss of love and affection. In all, the Tribunal computed the compensation at Rs.15,82,000/- and awarded a sum of Rs.13,44,700/-, after deducting 15% towards the quantum of contributory negligence. Aggrieved, the claimants are on appeal, complaining that the quantum of compensation is too low.

6.We have heard the learned counsel appearing for the appellant as well as Mr.J.Chandran, learned counsel appearing for the 2nd respondent / Insurance Company. Notice to the first respondent is dispensed with in viewof the fact that she remained ex parte before the tribunal.

7.The learned counsel for the appellant would fault the Tribunal for not having fixed the monthly income at Rs.12,000/-, despite the fact that sufficient proof of income has been provided by the claimants. She would point out that when the employer has been examined as P.W.3 and Ex.P5, salary certificate has been marked, the Tribunal was not right in disbelieving the same, that too, in the absence of any contra evidence on the side of the respondents. The learned counsel would also point out that the Tribunal has awarded only Rs.40,000/- towards loss of love and affection and it should have been Rs.80,000/- as per the judgment of the Hon'ble Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi and Others** reported in **(2017) 16 SCC 680**.

8.Mr.J.Chandran, learned counsel appearing for the Insurance Company would submit that the evidence of the employer, P.W.3 was disbelieved by the Tribunal and as such, the Tribunal took the notional income at Rs.10,000/- per month. The Tribunal cannot be faulted for doing so. He would, however, fairly submit that the compensation awarded for loss of love and affection can be increased to Rs.80,000/-. We have heard the rival submissions.

9.We are unable to sustain the finding of the Tribunal, fixing the monthly income at Rs.10,000/-. Even a last grade employee in the government service at that time was earning more that that. Even assuming the salary certificate and the evidence is not believable, it can be easily assumed that a18 year old person, working as a Mechanic would have definitely earned Rs.12,000/- per month particularly, at the time of the accident namely, 2018. We are therefore, unable to sustain the finding of the Tribunal on the monthly income. The claimants have claimed that he was earning Rs.12,000/- and there was sufficient evidence to support the claim. Hence, we fix the monthly income at Rs.12,000/-.

10.If the monthly income is fixed at Rs.12,000/- and if we add 40% towards future prospects, the total income comes to Rs.16,800/-. If we are to deduct 50% towards personal expenses, the contribution would be Rs.8,400/- per month. If we apply multiplier of 18, the pecunary loss would be Rs.18,14,400/-. If we add a sum of Rs.15,000/- each towards loss of estate and funeral expenses and Rs.80,000/- towards loss of love and affection, the total compensation would be Rs.19,24,400/-. After deducting 15% namely, the quantum of contributory negligence, the compensation payable would work out to Rs.16,35,740/-.

11.In view of the above, this Civil Miscellaneous Appeal is partly allowed. The award of the Tribunal is modified, granting a sum of

Rs.16,35,740/- towards compensation with 7.5% interest from the date of petition till date of payment. The Insurance Company is given twleve weeks time to deposit the compensation granted. Award of the Tribunal, directing payment of entire compensation to the 1st appellant / mother is confirmed. On such deposit, the 1st appellant / mother is permitted to withdraw the entire amount. No costs.

(R.S.M.,J.) **(R.K.M.,J.)**
21.07.2023

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Internet:Yes
Index:No
Speaking
Nuetral Citation : No

R.SUBRAMANIAN, J.
and
R.KALAIMATHI, J.

KKN

To:-

The Motor Accident Claims Tribunal,
II-Court of Small Causes,
Chennai.

C.M.A.No.1556 of 2023

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