IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

C.M.A.No.2132 of 2017

1.J.Vijayalakshmi
2.Sripriya Jeyaraman
3.V.J.Karthik
4.N.Vaidyanathasamy (died)
5.V.Gopalakrishnan
6.V.Kalyanaraman
7.V.Sankaran
8.V.Chandrasekaran ...Appellants

-Vs-

1.A.Sundaresan

2.Tata AIG General Ins. Co. Ltd.,
No.1, Commander in Chief Road,
Ethiraj Salai,
Chennai – 600 008. ...Respondents

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree, dated 09.11.2016, in M.C.O.P.No.1177 of 2009 on the file of the learned Chief Judge, Small Causes Court, Chennai.

For Appellants	:	Mr.T.G.Balachandran
For R1	:	No appearance
For R2	:	Mr.M.B.Raghavan

JUDGMENT

[Judgment of the Court was made by **S.S.SUNDAR, J**.,]

As against the award of compensation by the Motor Accident Claims Tribunal, Chennai dated 09.11.2016, in M.C.O.P.No.1177 of 2009, the above appeal is preferred by the appellants.

2.The appellants are the wife and children of the deceased, by name, V.Jayaraman. It is admitted before this Court that on 18.02.2009 at about 10.45 hrs, the deceased V.Jayaraman was riding his two-wheeler from west to east near Peninsula Hotel and at that time a bolero jeep, which was driven in a rash and negligent manner hit the vehicle of the deceased. As a result of the accident, the said V.Jayaraman died on the spot.

3.The appellants (hereinafter referred to as "claimants") filed M.C.O.P.No.1177 of 2009 before the Motor Accident Claims Tribunal, Chennai, claiming a sum of Rs.63,05,000/- (restricted to Rs.50,00,000/-) by way of compensation. The Tribunal held that the accident was caused due to the rash and negligent driving of bolero jeep and that the claimants are entitled to a sum of Rs.3,87,137/- as total compensation.

4.It is to be noted that, in the claim petition, the income of the deceased was specifically stated as Rs.50,000/- per month. From the Award, it is seen that the Tribunal has taken a sum of Rs.4,000/- as the monthly income of the deceased. After deducting 1/4th towards personal expenses of the deceased a sum of Rs.3,000/- has been taken as monthly income of the deceased. Adopting 7 as the multiplier to fix the compensation, the Tribunal awarded compensation towards loss of consortium, loss of love and affection, medical bills as per Ex.P.15, and funeral expenses etc and awarded the total compensation amount as Rs.3,87,137/-. Aggrieved by the quantum awarded by the Tribunal, the above appeal is preferred by the claimants.

5.The learned counsel appearing for the appellants submitted that there is ample evidence to show that the income of the deceased was Rs.50,000/- per month. He relied upon the documents Exs.P8, P9 and P12 which stands in the name of M/s.Abbas Cultural Organization. The claimants had not filed any other documents to prove the legal status of M/s.Abbas Cultural Organization. However, the learned counsel appearing for the appellants before this Court has advanced his argument that the deceased is the proprietor of the M/s.Abbas Cultural Organization and the statement of accounts of M/s.Abbas Cultural Organization should be taken as the income of the deceased. The statements of accounts of M/s.Abbas Cultural Organization is for the period from 10.04.2007 to 12.06.2008.

6.Ex.P9 is marked as income and expenses statement of the deceased. However, an auditor has prepared the income and expenses statement for the period from 01.04.2008 to 18.02.2009. Ex.P9 is not even the income tax return. The person who prepared this income and expenses statement is examined as P.W.3. During the cross examination of P.W.3, the witness has categorically admitted that the organization named as M/s.Abbas Cultural Organization is being run for more than 30 years and that they have not paid income tax for any of the financial year. The evidence of the auditor is self contradictory. From the evidence, the document produced by the claimants would only indicate that the deceased who was the Secretary of the Organization was organising cultural events in various places. Since income was not assessed for the purpose of income tax as admitted by the auditor himself, there is no clue as to how the claimants could rely upon this document under Ex.P9 to prove the income of the deceased on the date of accident.

7.The admission that the income received by M/s.Abbas Cultural Organization was not assessed to tax in the name of deceased demolishes the case of the claimants that the income of the organisation should be treated as the income of the deceased. In the absence of supporting documents to show juristic personality of M/s.Abbas Cultural Organization, this Court cannot accept the arguments of the learned counsel appearing for the appellants that the document under Ex.P9 should be considered as relevant to decide the income of the deceased. The auditor who was examined as P.W.3 has also admitted that the claimants have not paid any tax for the income of M/s.Abbas Cultural Organization even after the death of the deceased.

8.On behalf of the claimants one of the sons of the deceased, by name, V.J.Karthick, who was examined as P.W.1. It is stated by P.W.1 that there was no post of President in the M/s.Abbas Cultural Organization and his father was managing the day-to-day affairs in the position of the Secretary of M/s.Abbas Cultural Organization. He admitted that his father has not paid any tax. Though the learned counsel appearing for the appellants submitted that the deceased was the sole proprietor of M/s.Abbas Cultural Organization, P.W.1 has categorically admitted the fact that the deceased had been described as the proprietor of M/s.Abbas Cultural Organization wrongly and that he is only the Secretary of M/s.Abbas Cultural Organization. It is also to be noted that P.W.1 has specifically admitted that the deceased had PAN card, whereas M/s.Abbas Cultural Organization had no PAN card.

9.Having regard to the admitted facts, this Court is unable to sustain the arguments of the learned counsel appearing for the appellants. The income of the deceased should be assessed based on the documents filed by the claimants under Exs.P8 and P9 and other documents which are only the income generated by an organization, by name, M/s.Abbas Cultural Organization. The income of the Organization is not assessed to tax in the name of the deceased. Hence it is impermissible in law to take the income of M/s.Abbas Cultural Organization as the legitimate income of the deceased. Therefore, this Court is unable to sustain the arguments of the learned counsel appearing for the appellants.

10. From the documents produced by the claimants, it is seen that the deceased has been actively organising several cultural events as the Secretary of the said Organization. Having regard to the evidence available to prove the capacity of the deceased to organize several cultural events inviting popular artist, this Court is of the view that the income of the deceased on the date of accident cannot be fixed less than Rs.15,000/- per month. After, deduction of 1/4th, the net monthly income of the deceased should be taken as Rs.11,250/-. Since the deceased is more than 64 years at the time of accident no additional income is permissible towards future prospects. Therefore, the claimants are entitled to a sum of Rs.9,45,000/- towards loss of income.

11.This Court is unable to find any irregularity in the amount that was awarded by the Tribunal under other heads. Hence the claimants are entitled to a sum of Rs.10,80,137/- towards total compensation. The claimants are also entitled to interest at 7.5% from the date of the petition. The appellants 5 to 8 are not dependants. The learned counsel appearing for claimants agree to specify a sum of Rs.50,000/- to them and the entire balance shall be disbursed to appellants 1 to 3 in equal proportion.

12.Therefore, this civil miscellaneous appeal is partly allowed and the award of Tribunal is modified as directed above. No costs.

[SSSRJ] [AANJ]
03.01.2023

cda
Index : Yes/No

To

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(Motor Vehicle Accident Claims Tribunal),
Chennai.

2.Tata AIG General Insurance Company Ltd.,
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