IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 12.04.2023

Coram:

THE HONOURABLE MRS.JUSTICE N.MALA

C.M.A.No.663 of 2023

1.Parimila
2.Pavithra
3.M.Bharath
4.Sarath (minor)
5.Alamelu ... Appellants

Vs.

1.M.Deenadhayalan
2.Reliance General Insurance Company Limited,
Legal department,
Reliance House 6th floor,
No.6, Haddows road,
Nungambakkam,
Chennai – 6. ... Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, to enhance the award dated 09.08.2021 and made in M.A.C.T.O.P.No.6441 of 2017 on the file of the Motor Accident Claims Tribunal, II Special Sub Judge, Small Causes Court, Chennai.

For Appellants : Mr.S.R.Suga

For R-2 : Ms.C.Bhuvanasundari

JUDGMENT

The appeal has been filed by the claimant challenging the Judgment and Decree dated 09.08.2021, passed in M.A.C.T.O.P.No.6441 of 2017, on the file of the Motor Accident Claims Tribunal, II Special Sub Judge, Small Causes Court, Chennai.

2. The appeal is filed by the appellants/claimants seeking enhancement of compensation.

3. The claimants are the wife, mother and children of the deceased V.Mohan, who died in a Motor accident which occurred on 29.06.2017. According to the claimants, the deceased was a heavy vehicle driver and earning a sum of Rs.35,000/- per month. The claimants therefore filed the claim petition claiming Rs.40,00,000/- as compensation.

4. The owner of the vehicle M.Deenadhayalan/first respondent in the claim petition remained ex-parte and the second respondent Insurance Company, insurer of the 1st respondent contested the claim petition by filing a counter.

5. The 2nd respondent in its counter disputed the negligence,

liability and also income of the deceased.

6. Before the Claims Tribunal, the 1st claimant examined herself as PW1 an eye witness as PW2 and marked as Ex. P1 to P12 in support of the claim. On the side of the respondents, neither any witness was examined nor any document was marked.

7. The Claims Tribunal, on assessment of entire evidence on record returned a finding of negligence against the 1st respondent/owner of the offending vehicle, assessed a sum of Rs.16,92,500/- along with 7.5% interest as compensation and mulcted the liability on the 2nd respondent/Insurance company. Not satisfied with the quantum of the compensation awarded by the Tribunal, the claimants filed the present appeal seeking enhancement of compensation.

8. The learned counsel for the Appellants submitted that Tribunal failed to note that, the deceased was working as a heavy vehicle driver and was earning Rs.35,000/- per month, including daily Batta. The learned counsel for the Appellants further submitted that, the Tribunal erroneously fixed the income at Rs.10,000/- only. Learned counsel further submitted that, the compensation under the other heads was in conformity

with the prevailing law. The counsel therefore pleaded that the compensation towards loss of income alone needed to be enhanced.

9. The learned counsel for the second respondent, on the other hand, vehemently contended that, the compensation fixed by the Tribunal was fair and just and needed no interference.

10. I have considered the rival submissions of both the counsels and perused the materials available on record.

11. It is not disputed that the deceased died in a motor accident which occurred on 29.06.2017, and he was aged 47 years at the time of the accident. The claimants have marked Exhibits P6, driving license of the deceased person and also marked Exhibit P9, P10 and P11 in support of their case that the deceased was a heavy vehicle driver. Exhibit P9 is the Heavy vehicle driver training Wing Certificate issued to the deceased for having undergone training of Safe transportation of the hazardous goods

12. Ex.P10 and P11 are the entry passes issued by Indian Oil Corporation Limited and Ennore Port.

13. In my view, the said documents establish the claimants' contention that the deceased was a heavy vehicle driver and that he was earning substantial income.

14. The learned counsel for the 2nd respondent submitted that, in the absence of corroborative evidence, documents could not be accepted.

15. In my view, the said contention of the learned counsel for the 2nd respondent cannot be considered, for the simple reason that, there is absolutely no contra evidence filed by the 2nd respondent to dispute the above said documents.

16. In view of the documentary evidences Exs.P6, 9, 10 and 11, I am of the view that, income of the deceased can be safely assessed at Rs.15,000/- per month, 25 % of the income is added towards future prospects and 1/4th is deducted towards personal expenses,

Loss of Income	***Amount in Rs.***
Notional income (Per month)	18,750
Notional income (per annum) (Rs.18,750/- x 12)	2,25,000
Multiplier	13
	29,25,000
Less: Personal Expenses (1/4)	7,31,250
Total	**21,93,750**

17. The award of the Tribunal is modified as follows **:**

Heads	***Awarded by the Tribunal (Amount in Rs.)***	***Awarded by this Court (Amount in Rs.)***
Total loss of dependency	**14,62,500**	**21,93,750**
Loss of Consortium	**2,00,000**	**2,00,000**
Loss of Estate	**15,000**	**15,000**
Funeral expenses	**15,000**	**15,000**
Total	**16,92,500**	**24,23,750**
Enhanced Amount		**7,31,250**

18. Therefore, the claimants shall be entitled to an enhanced compensation of Rs.7,31,250/- towards loss of dependency. As far as other heads are concerned, the amount awarded by the Tribunal is confirmed. The learned counsel for the Insurance Company submits that award of the Tribunal has already been deposited and same was also withdrawn by the claimants. In view of the said submission a direction is

issued to the Insurance Company to deposit the enhanced amount of Rs.7,31,250/- along with 7.5% interest within a period of six weeks from the date of receipt of a copy of this Order.

19. The apportionment of compensation shall be in the ratio fixed by the Tribunal. On such deposit by the Insurance Company, claimants are entitled to withdraw their appropriate share, by making proper application before the Tribunal.

20.When the claim petition was filed in the year 2017, the 4th appellant was aged about 17 years. Now, the 4th appellant is aged about 23 years. Learned counsel for the appellants seeks permission of this Court for a direction to the claims Tribunal to permit the 4th appellant who is now a major to withdraw his share of the award amount. In view of the said submission, 4th appellant namely Sarath shall be entitled to withdraw his share of the deposited amount by making appropriate application before the tribunal.

21. The appeal is party allowed. There shall be no order as to costs.

12.04.2023

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

N.MALA.J.,

gd

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