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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.07.2023

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The Honourable Mr.Justice KRISHNAN RAMASAMY

C.M.A.No.661 of 2017

Rose Mary (died)

Micheal (died)

1.Clement

2.George Victor

...Appellants

Versus

Ganapathy (died)

1.United Insurance Company Limited,

Third Party Cell Claims Office,

Co-Operating Buildings,

No.38, Anna Salai, Chennai – 600 002.

2.Sinthamani

3.Senthil Kumar

...Respondents

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 praying to enhance the award dated 25.04.2013 made in M.A.C.T.O.P.No.95 of 2005 on the file of the Motor Accidents Claims Tribunal and IV Additional District Judge, Ponneri.

(Cause Title was accepted vide order dated 24.09.2014 made in M.P.No.1 of 2014 in C.M.A.No.SR39924 of 2014)

For Appellants : Mr.F.Terry Chella Raja

For Respondent – 1 : Mr.T.Ananthasekar

For Respondents – 2 & 3 : Notice not ready



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JUDGMENT

This Civil Miscellaneous Appeal has been preferred by the appellants/claimants (legal representatives of the deceased claimant Rose Mary) seeking to enhance the compensation awarded by the learned Motor Accidents Claims Tribunal and IV Additional District Judge, Ponneri vide award dated 25.04.2013 in M.A.C.T.O.P.No.95 of 2005.

2. The brief facts of the case are as follows:

On 23.07.2004, at about 10.30 a.m., while one Rose Mary was standing on the edge of the road to cross the road at Karunguzhi Village, Ramalingam Madam, Madhuranthagam Taluk, Kancheepuram District, a Tata Sumo bearing Registration No.TN 22 K 4776 coming in the same road towards Chennai dashed the said Rose Mary, due to which, the said Rose Mary had sustained severe injuries. Hence, the said Rose Mary had filed a claim petition in M.A.C.T.O.P.No.95 of 2005 against the owners of the offending vehicle viz., one Ganapathy,



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respondents 2 & 3 and the insurer of the offending vehicle/first respondent Insurance Company. Pending the claim petition, the claimant Rose Mary had died on 19.03.2008 due to the injuries which she sustained in the accident. After her death, her husband and two sons were impleaded as petitioners 2, 3 & 4 in the said claim petition and claimed a sum of Rs.20,00,000/- as compensation for the injuries sustained by the deceased claimant Rose Mary in the accident.

3. The first respondent/Insurance Company had filed its counter statement in M.A.C.T.O.P.No.95 of 2005 denying all the averments made by the appellants/claimants in the Claim Petition.

4. Before the Tribunal, on the side of the appellants/claimants, two witnesses were examined viz., P.W.1 & P.W.2 and 20 documents were marked as Exs.P1 to P20. On the side of the respondents, no witnesses were examined and no documents were marked as exhibits.

5. On an appreciation of the oral and documentary evidence produced before it, the Tribunal arrived at a conclusion that the legal



representatives of the deceased claimant Rose Mary are only entitled to get the medical expenses of the deceased claimant as compensation.

By arriving at such a conclusion, the Tribunal had allowed the claim petition in M.A.C.T.O.P.No.95 of 2005 and directed the first respondent/Insurance Company to pay a sum of Rs.1,80,000/- as compensation to the legal representatives of the deceased claimant Rose Mary.

6. Aggrieved over the quantum of compensation awarded by the Tribunal, the appellants/claimants have preferred this appeal before this Court.

7. The learned counsel for the appellants/claimants submitted that at the time of accident, the claimant Rose Mary was 50 years old. She was working as a Mid-day Meal Organiser and her monthly income was Rs.1,500/-. Due to the accident, the claimant Rose Mary had sustained severe injuries and after the accident, she was taking treatment as in-patient in the Hospital for more than 50 days i.e., from 23.07.2004 to 27.09.2004. He further submitted that the claimant Rose Mary had died due to the injuries which she sustained in the road



accident. However, without considering all these aspects, the Tribunal observed in its findings that the legal representatives of the deceased claimant Rose Mary are entitled to get the medical expenses of the deceased claimant alone as compensation.

7.1. The learned counsel further submitted that the compensation awarded by the Tribunal is a very meager amount. While awarding compensation, the Tribunal failed to note that the claimant Rose Mary was hail and healthy before the accident and during the pendency of claim petition, she had died only because of the injuries which she had sustained in the accident.

7.2. Further, the Tribunal ought to have awarded an amount towards Loss of Income because due to the injuries sustained by the claimant Rose Mary in the accident, she lost her earning power. Therefore, the learned counsel submitted that it would be suffice, if a sum of Rs.1,00,000/- is awarded as compensation under the head, 'Loss of Income'.

8. The learned counsel appearing for the first



respondent/Insurance Company submitted that the first respondent/Insurance Company has come forward to pay a sum of Rs.90,000/- towards Loss of Income.

9. Heard the learned counsel for the appellants/claimants and the learned counsel appearing for the first respondent/Insurance Company.

10. From a perusal of the award passed by the Tribunal, it is seen that the Tribunal had awarded only a sum of Rs.1,80,000/- as compensation to the appellants/claimants that too awarded for the medical expenses incurred to the deceased claimant Rose Mary.

11. Considering the fact that the deceased claimant Rose Mary had sustained grievous injuries due to the accident and having regard to the submissions made by the learned counsel for the appellants/claimants as well as the learned counsel for the first respondent/Insurance Company, this Court feels that it would be just and appropriate to award a sum of Rs.90,000/- towards Loss of Income.

Accordingly, this Court awards a sum of Rs.90,000/- (Rupees Ninety



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Thousand only) towards Loss of Income.

12. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation of Rs.1,80,000/- awarded by the Tribunal is enhanced to Rs.2,70,000/- (Rupees Two Lakhs and Seventy Thousand only). Out of the award amount as enhanced by this Court, the appellants/claimants are entitled equally. The first respondent/Insurance Company is directed to deposit the enhanced award amount of Rs.2,70,000/-, after deducting the amount(s), if any, already deposited, along with interest at 7.5% per annum from the date of petition till the date of deposit, to the credit of M.A.C.T.O.P.No.95 of 2005, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit being made, the appellants/claimants are permitted to withdraw the said amount, as per the apportionment ordered by this Court. No costs.

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Index : Yes/No

Speaking Order (or) Non-Speaking Order



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KRISHNAN RAMASAMY, J.

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