IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.03.2023

CORAM:

The HONOURABLE MRS.JUSTICE N.MALA

C.M.A.No.1126 of 2020

1.Tamilarasi

2.Samporanam

3.Soundaram

4.Suseela ... Appellants

Vs.

1. Vipul Ramdas Jagtap

2.The New India Assurance Co., Ltd.,
Ahmed Nagar,
Local Business Adress. Ram Complex.,
Paramathi Road, Namakkal.

3.Suganthi

4.Minor Brindha Sree
Rep., by her next friend Guardian Mother Suganthi ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated

21.07.2016 made in M.A.C.T.O.P.No.33 of 2010 on the file of the Motor Vehicle Accident Claims Tribunal/ Subordinate Judge Court, Tiruchengode.

For Appellant : Mr.C.Paraneedharan

For Respondents : Mr.J.Satheesh
for Mr.R.Neetheperumal (For 2nd respondent)

Mr.S.P.Yuvaraj (For 3rd and 4th respondents)

No Appearance (For 1st respondent)

JUDGMENT

The claimants have filed the appeal for enhancement of compensation.

2. The necessary facts leading to the appeal are as follows:

On 20.12.2009 at 06.00 A.M., while the deceased Muthusamy was traveling in car near Mankaradumedu, the Driver of the bus, belonging to the first respondent, drove the bus in a rash and negligent manner and dashed against the car. Due to the impact, the deceased sustained injuries on face and head and died on the way to the hospital. The claimants, the daughters of the deceased through his first wife filed the claim petition impleading the second wife and the minor child of the second wife as respondents and claimed a sum of Rs.25,00,000/- as compensation.

3. The first respondent remained exparte in the Court below. The second respondent filed a counter generally denying all the averments made in the claim petition, including the age, occupation, income, accident, insurance, driving license and RC book. The second respondent insurance company pleaded that the compensation claimed at Rs.25,00,000/- was highly excessive and exorbitant. The third and fourth respondents filed a counter petition contending that they were alone entitled for the compensation amount as the claimants were not dependent on the deceased.

4. Before the claims Tribunal the first claimant examined herself as P.W.1 and one Ganesan was examined as P.W.2 and marked Exs.P.1 to P.8. On the side of respondents, the second wife of the deceased was examined as R.W.1 and Exs.R1 to R3 were marked.

5. The Claims Tribunal on an assessment of the entire evidence on record, awarded compensation of Rs.9,30,000/- along with interest at

the rate of 7.5% per annum. Not satisfied with the amount awarded by the Claims Tribunal, the married daughters of the deceased, who were the claimants in the claim petition, have preferred the above appeal.

6. The learned counsel for the appellants submitted that the assessment of the income at Rs.20,000/- by the Claims Tribunal was very meagre, considering that the deceased was a Income Tax assessee and his assessed income for the year 2005-2006 was Rs.1,39,133/- and for the year 2006-2007 was Rs.2,76,029/- which are evidenced by Exs.R.1 and R.2 respectively. The learned counsel further submitted that the Tribunal had erred in deducting 10% from the compensation amount towards income tax. The learned counsel for the appellants further submitted that the appellants were entitled to parental consortium as they lost their father in the accident.

7. The learned counsel for the respondents on the other hand submitted that the assessment of the income, loss of earning and the total compensation awarded by the Tribunal was just, fair and reasonable and did not call for any interference by this Court.

8. I have heard the learned counsels appearing on either side and I have perused the entire material placed on record.

9. The Tribunal assessed the income of the deceased at Rs.20,000/- by relying on the Exs.R.1 and R.2. The accident took place on 20.12.2009 and therefore it was incumbent on the appellants to file the returns for the assessment year 2008-2009 also, to prove the income of the deceased at the time of accident. As the claimants failed to prove by reliable evidence, the income of the deceased at the time of the accident; the submissions of the appellants counsel that the income should be fixed at Rs.30,000/- per month cannot be countenanced. I am therefore of the view that. the assessment of the income by the Tribunal is just fair and reasonable and it does not call for any interference by this Court.

10. The Tribunal erred in deducting 10% from the total income. In my view, the deduction ought to have been made only on taxable income. The taxable income is Rs.15,000/-. Therefore, 10% has to be deducted from Rs.15,000/- which is 1,500/-. The loss of dependency would then be as follows i.e., 2,38,500/- X 5=11,92,500/-. 1/4th of the said amount is deducted towards the personal expenses of the deceased.

Therefore the compensation towards loss of dependency would be Rs.8,94,375/- which is rounded to Rs.8,94,500/-. The claimants are entitled to Rs.40,000/- each towards loss of consortium. Therefore, a sum of Rs.1,60,000/- is awarded towards loss of Parental consortium to the appellants 1 to 4. Following the judgment of the Supreme Court ***National Insurance Co. Ltd. vs. Pranay Sethi and others***, 2017 (2) TN MAC 609 (SC) : 2017 (16) SCC 680, Rs.15,000/- is fixed for funeral expenses and Rs.15,000/- for loss of estate. Hence, the award of the Tribunal is modified as follows:

<table>
<tr><th>S.No</th><th>Description</th><th>Amount awarded by Tribunal (Rs)</th><th>Amount awarded by this Court (Rs)</th><th>Award confirmed or enhanced or granted</th></tr>
<tr><td>1.</td><td>Loss of dependency</td><td>8,10,000/-</td><td>8,94,500/-</td><td>Enhanced</td></tr>
<tr><td>2.</td><td>Transport to hospital</td><td>10,000/-</td><td>10,000/-</td><td>Confirmed</td></tr>
<tr><td>3.</td><td>Loss of Consortium</td><td>50,000/-</td><td rowspan="2">1,60,000/-</td><td rowspan="2">Enhanced</td></tr>
<tr><td>4.</td><td>Love and Affection</td><td>50,000/-</td></tr>
<tr><td>5.</td><td>Funeral Expenses</td><td>10,000/-</td><td>15,000/-</td><td>Enhanced</td></tr>
<tr><td>6.</td><td>Loss of Estate</td><td></td><td>15,000/-</td><td>Granted</td></tr>
<tr><td></td><td>Total</td><td>Rs.9,30,000/-</td><td>Rs.10,94,500/-</td><td>Enhanced by Rs.1,64,500/-</td></tr>
</table>

11. The claimants would hence be entitled to a total

compensation of Rs.10,94,500/- along with interest at the rate of 7.5% per annum. As far as the apportionment of the compensation is concerned, the appellants being the married daughters would be entitled to a sum of Rs.40,000/- each along with interest at the rate of 7.5% per annum. The third respondent would be entitled to Rs.6,34,500/- at 7.5% interest and the minor fourth respondent to Rs.3,00,000/- at 7.5% interest. The second respondent insurance company is directed to deposit the enhanced compensation of Rs.10,94,500/- along with accrued interest at the rate of 7.5% per annum within a period of eight weeks from the date of receipt of copy of the order, less the amount, if any, deposited. The claimants thereafter will be entitled to withdraw the amount by making appropriate application. As far as minor's share is concerned the order of the Tribunal shall be followed. Accordingly, the Civil Miscellaneous Appeal is Partly allowed. No costs.

28.03.2023

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Index : Yes/No
Neutral Citation : Yes/No

N.MALA, J.

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To:
The Motor Accidents Claims Tribunal/
Subordinate Judge Court,
Tiruchengode.

C.M.A.No.1126 of 2020

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