IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.09.2023

CORAM :

THE HON'BLE MR. JUSTICE P.VELMURUGAN

C.M.A.No.55 of 2019

1. V.Thaiyalnayaki
   W/o.I.Velaydham

2. D.Latha
   W/o.Dhansu

3. V.Pazhani
   S/o.Velaydham

4. K.Jayanthi
   W/o.Kasinathan

5. V.Balamurugan
   S/o.Velaydham ... Appellants

Vs.

1. K.Thandapany
   S/o.Krishnasamy Chetty

2. The Divisional Manager
   United India Insurance Company Limited
   Branch Office P.B.No.172
   261, Jawaharlal Nehru Street
   Puducherry - 605 001. ... Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Award dated 10.12.2015 made in M.A.C.T.O.P.No.639 of 2010 on the file of the Motor Accidents Claims Tribunal (III Addl. District Judge), Puducherry.

For Appellants : Mr.D.Ravichander

For Respondents : Mr.S.Mahesh, for R1

Ms.I.Malar, for R2

J U D G M E N T

The claimants are the appellants before this Court and the Award and decree dated 10.12.2015 passed in M.C.O.P.No.639 of 2010 on the file of the Motor Accidents Claims Tribunal (III Addl. District Judge), Puducherry, is under challenge in this present appeal.

2. For the sake of convenience, the parties are referred to as per their ranking before the Tribunal.

3.The facts in a nutshell are as follows :

On 07.07.2009 in the afternoon, the deceased Velayudham went to Aarupadai Veedu Medical College and Hospital to see his wife, who was admitted in the hospital for treatment, at about 4.30 p.m., when the deceased was returning to his residence on foot at the extreme left side of the road, at that time, a bus by name Vijayalakshmi bearing Registration No.PY-01-Q-7699, came from the same direction, dashed against him. Due to the said impact, the deceased sustained head injuries and multiple injuries all over the body and immediately, he was taken to Government General Hospital, Puducherry for treatment and the deceased died at 5.20 p.m. Hence, the legal heirs of the deceased have filed the claim petition seeking a sum of Rs.11,31,000/- as compensation.

4. The first respondent, who is owner of the bus remained *ex-parte* before the Tribunal.

5. The claim petition was contested by the Insurance Company on various grounds and specifically stated that first respondent's bus was not at all involved in the accident. The deceased was under the influence of alcohol at the time of accident and he is solely responsible for the accident.

The claimants are neither the legal heirs nor dependents or legal representatives of the deceased. Hence, the Insurance Company is not liable to pay compensation. That apart, they had disputed the other claims made in the claim petition.

6. To substantiate the case on the side of the claimants, P.W.1 to P.W.4 were examined and 15 documents were marked as Ex.P1 to Ex.P15. On the side of the Insurance Company, neither any oral evidence was adduced nor documents were marked.

7. The Tribunal, after analysing the entire evidence, found that the accident had occurred only due to the rash and negligent driving of the driver of the first respondent's bus and the second respondent being the Insurer of the vehicle is liable to pay compensation to the claimants. By coming to such conclusion, the Tribunal has passed an award for a sum of Rs,2,60,000/-. The break-up details of the compensation awarded by the Tribunal are as under :

S. No.	***Heads under which the amount is awarded by the Tribunal***	***Amount awarded by the Tribunal in Rs.***
1.	Towards Pecuniary loss	1,80,000
2.	Towards Transport Expenses	10,000
3.	Towards Funeral Expenses	10,000
4.	Towards Loss of Estate	10,000
5.	Towards Loss of Consortium	25,000
6.	Towards Love and Affection	25,000
	Total	**2,60,000**

8. Not being satisfied with the quantum of compensation awarded by the Tribunal, the claimants have preferred the present appeal seeking enhancement of compensation.

9. The learned counsel for the appellants/claimants submitted that to prove the age of the deceased, the claimants marked Ex.P11/Certificate of physical fitness issued by a Medical Officer and Ex.P12/Certificate issued by a Medical Officer, Cuddalore Government Head Quarters Hospital, it reveal that the age of the deceased was 44 years. However, the Tribunal ought to have taken the age of deceased as 44 years, based on Ex.P8/Postmortem report taken the age of the deceased as 65 years. Further, the Tribunal has not properly considered the avocation and

income of the deceased. At the time of accident, the deceased was working as a Water Tank Operator at Keezhinzipet Village Panchayat and was earning Rs.1,200/- per month, apart from that the deceased was a commission agent for the sale of Tapiaco and Groundnut and was earning Rs.1,50,000/- per annum and the same was proved by examining P.W.3 and P.W.4 and also marking Ex.P9/Copy of the certificate issued by the proprietor of Sri Gajalakshmi Sago Factory, Ex.P10/Copy of the certificate issued by the proprietor of R.M.Tradera, Ex.P13/Copy of the Service Register of the deceased, Ex.P14/Order copy issued by the Block Development Officer and Ex.P15/Payment Schedule of the deceased. However, the Tribunal failed to consider the same, came to the conclusion that since the deceased was not an income tax assessee, at the age of 65 years, he was earning Rs.1,50,000/- per annum is not acceptable and fixed the monthly income of the deceased at Rs.4,500/-. He further submitted that the Tribunal ought to have applied the multiplier "12", has erred in applying the multiplier as "5" and future prospects has also not been considered. As per the decision of the Apex Court, where the number of dependent family members is 4 to 6, 1/5th of the amount is deducted towards personal expenses. However, the Tribunal ought to have deducted 1/5th of the amount towards persons expenses, has deducted 1/3rd of the amount, which is also not proper. Therefore, the impugned Award of the Tribunal does not reflect "just and fair" compensation, and therefore, the compensation awarded by the Tribunal has to be enhanced proportionate to the avocation of the deceased and the claimants prayed for allowing the present appeal by enhancing the compensation amount.

10. The learned counsel for the respondents submitted that in the claim petition, the age of the deceased was mentioned as 65 years, only after-taught, during trial they have produced contra documents to prove the age of the deceased as 44 years. Since there is no authenticated proof that the deceased was 44 years at the time of accident, the Tribunal fixed the age of the deceased at 65 years and applied proper multiplier method and awarded compensation. Except the first claimant/wife of the deceased, all other claimants, who are the daughters and sons of the deceased are married and all are above 30 years, therefore, the Tribunal had properly deducted 1/3rd amount towards personal expenses and also the compensation awarded

under all the other heads are fair and reasonable.

11. Heard the learned counsel for both sides and perused the materials available on record.

12.The accident is admitted. The offending vehicle was involved in the accident is also admitted. The offending vehicle was insured with the second respondent/Insurance Company and the liability of the Insurance Company is also not in dispute. The only dispute now raised before this Court is regarding the quantum of compensation awarded by the Tribunal.

13. The main defence taken by the learned counsel for the appellants/claimants that the deceased was 44 years, at the time of accident, whereas, the Tribunal fixed the age of the deceased at 65 years. According to the claimants, the age of the first claimant/wife of the deceased is 50 years and the second claimant/daughter of the deceased is 37 years and other claimants are above 30 years. Considering the age of the claimants, it is not possible to arrive that the age of the deceased is 44 years, at the time of

accident. To prove the same, the learned counsel for the appellants produced a copy of the Service Register of the deceased, which shows that the date of birth of the deceased is 01.07.1954, where as, the accident had occurred on 07.07.2009, therefore, on the date of accident the deceased has completed 55 years. Per contra, the respondent/Insurance Company has not produced any material to defend that the age mentioned in the Service Register is not correct. The Tribunal failed to consider the copy of the Service Register, taken the age of the deceased as 65 years only based on the postmortem report. Further, the Doctor, who conducted postmortem of the deceased has not specifically stated that as to whether he has conducted proper test to ascertain the age of the deceased. Therefore, in the absence of the same, based on the Service Register / Ex.P13, which is a public document, this Court fixed the age of the deceased at 55 years.

14. Insofar as avocation and income are concerned, the claimants have stated that the deceased was working as a Water Tank Operator at Keezhinzipet Village Panchayat and was earning Rs.1,200/- per month, apart from that he was doing commission agent business and was

earning Rs.1,50,000/- per annum. Admittedly, except Ex.P9 and Ex.P10 there are no materials to prove that the deceased was earning Rs.1,50,000/- per annum. Considering the occupation and earning capacity of the deceased and the year of the accident, the Tribunal rightly fixed Rs.4,500/- as notional monthly income of the deceased and this Court does not find any perversity in fixing the notional income of the deceased at Rs.4,500/-. Further, this Court taking the age of the deceased as 55 years and proper multiplier is "9". Further, as per the oft-quoted judgment of the Supreme Court in the case of ***National Insurance Company Limited vs. Pranay Sethi and others [(2017) 16 SCC 680]*** 15% of the notional income is added towards future prospects.

15. Thus, if Rs.4,500/- is taken as notional income of the deceased and 15% of the same is added towards future prospects, the amount works out to Rs.5,175/- [4,500 + 675]. As the first claimant is the only dependent of the deceased, all other claimants are above 30 years and married, if 1/3rd of the amount is deducted towards personal expenses, the total monthly income arrived at Rs.1,725/-. Resultantly, the annual income

was arrived at Rs.20,700/- [1,725 x 12]. Considering the age of the deceased being 55 years at the time of the accident, if multiplier “9” is applied, the actual Pecuniary loss comes to Rs.1,86,300/- [20,700 X 9]. Thus, the sum of Rs.1,80,000/- awarded by the Tribunal under the head Pecuniary loss is hereby enhanced to Rs.1,86,300/-.

16. Similarly, the sum of Rs.25,000/- awarded by the Tribunal under the head Loss of Consortium to the first claimant appears to be on the lower side and hence, the same is hereby enhanced to Rs.40,000/-.

17. The amounts awarded by the Tribunal under all the other heads are fair and reasonable and hence, they are confirmed.

18.Thus, the total compensation payable to the appellants/ claimants is re-calculated and tabulated below :

S.No.	***Heads under which amounts are awarded***	***Amount in Rs.***	***Amount in Rs.***
1.	Towards Pecuniary loss	1,80,000	1,86,300
2.	Towards Transport Expenses	10,000	10,000
3.	Towards Funeral Expenses	10,000	10,000

S.No.	***Heads under which amounts are awarded***	***Amount in Rs.***	***Amount in Rs.***
4.	Towards Loss of Estate	10,000	10,000
5.	Towards Loss of Consortium	25,000	40,000
6.	Towards Love and Affection	25,000	25,000
	Total	**2,60,000**	**2,81,300**

19. The total compensation of Rs.2,60,000/- awarded by the Tribunal to the claimants is hereby enhanced to Rs.2,81,300/-, which shall carry interest at 7.5% from the date of claim petition till the date of payment. The second respondent/Insurance Company is directed to deposit the total compensation awarded by this Court before the Tribunal, after adjusting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. The apportionment of shares fixed by the Tribunal to the claimants is hereby confirmed. On such deposit, the claimants are permitted to withdraw their respective shares. The appellants/claimants shall pay necessary Court fee, if any, on the enhanced compensation.

20. With the above observations and directions, the Civil

Miscellaneous Appeals is partly allowed. There shall be no order as to costs.

22.09.2023

Index: Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
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To

1.The Motor Accident Claims Tribunal
(II Addl. District Judge),
Puducherry.

2.The Section Officer,
V.R.Section,
High Court, Madras.

P.VELMURUGAN, J.

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