BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **26.04.2023**

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A(MD)No.321 of 2023
and
C.M.P(MD)No.3963 of 2023

1.Ramachandran

2.Sarulatha

3.Santhiya

4.Yogalakshmi

5.R.Arul Ramalingam :Appellants/Petitioners

.vs.

1.Manimaran

2.The Divisional Manager,
The Oriental Insurance Company Limited,
4, Barathithasan Salai,
Cantonment,
Trichirappalli District :Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the judgment and decree made in M.C.O.P.No.32 of 2020, dated 1.9.2022, on the file of the Motor Accidents Claims Tribunal/Special District Judge, Trichirappalli, seeking enhancement of compensation of Rs.10,00,000/-.

For Appellant :Mr.N.Sudhagar Nagaraj

For Respondent-2 :Mr.A.Ilango

JUDGMENT
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This Civil Miscellaneous Appeal has been filed by the claimants seeking enhancement of compensation awarded by the Tribunal.The trial Court has granted compensation as follows:

1.Loss of Dependency	- Rs.11,97,900/-
2.for transport expenses	- Rs.10,000/-
3.For loss of estate	-Rs.10,000/-
4.For loss of consortium to the first petitioner	- Rs.35,000/-
5.For loss of parental consortium to the Petitioners 2 to 5.	-Rs.1,40,000/-
6.For funeral expenses	-Rs.10,000/-
total	-Rs.14,02,900/-

2.The parties are referred to herrein as per their ranking before the Tribunal.

3.The brief facts leading to the filing of the appeal is as follows:

The deceased travelled as a pillion rider in a motor-cycle bearing Registration No. TN 49 A 0182 driven by the second petitioner with her mother as pillion rider on 9.2.2018. At about

1.45 p.m., while returning from Trichy Amma Mandapam, the bus bearing Registration No. TN 45 AE 5477 came in a rash and negligent manner and dashed the two wheeler from the behind. As a result, the deceased succumbed to injuries. A crime has been registered against the driver of the offending vehicle. The deceased was 54 years at the time of death. He was also a partner in Arul Electronics, besides he is also working in a hospital and drawing Rs.50,000/- p.m. Hence the legal heirs of the deceased filed the claim petition claiming compensation.

4.The second respondent Insurance Company took a defense that the bus was driven by its driver in a cautious manner, however, the driver of the two-wheeler dashed against the bus. The age and income of the deceased was also disputed.

5.On the side of the Petitioners, P.W.1 was examined and Ex.P1 to Ex.P13 were marked. On the side of the respondents, R.W. 1 was examined and no documents marked and Ex.X 1 was also marked.

6.Based on the evidence, the Tribunal has come to the conclusion that only the driver of the offending vehicle was negligent in driving the vehicle and fixed the notional income of the deceased at Rs.11,000/-p.m. The Tribunal has disbelieved the income tax return only on the ground that Form-26AS has not been filed and arrived at the compensation as stated above. Challenging the above said compensation, the present appeal has been filed by the claimants seeking enhancement of compensation.

7.During the pendency of the appeal, Petition for receipt of additional documents in C.M.P(MD)No.3963 of 2023 has been filed for receipt of return for the year 2015-16, 2016-2017 and 2017-2018. Besides the bank details for the year 2015-16 which is also received and marked as Ex.P12,13 and 14 with bank statement and the Petition is ordered accordingly. The receipt of all these documents has not been objected by the respondents and the additional documents filed is income tax returns and Form-26 of the Income-Tax Department supported by the bank statements to prove the transaction of the deceased two year prior to the death.

8.The learned counsel for the appellants would submit that the admitted documents has not been considered by the Tribual merely on the ground that Form-26 has not been filed. The learned counsel for the second respondent/Insurance Company fairly submitted that on verification of these documets and on proper enquiry made, it is found that those documents are proper and necessary for arriving at a just compensation.

9.Considering the above submissions and on a perusal of the additional documents and the income tax returns for the year 2015-16, 2016-17 and 2017-18 and that income tax for the year 2015-16 is Rs.4,70,120/- and the gross total income for the year 2016-17 is Rs.4,97,241/- and for the year 2017-18, the gross total income is 5,03,080/-.Therefore the average total for three years comes to Rs.4,90,147/- and from this one fourth has to be deducted towards personal expenditure of the deceased and the same is to be multiplied multiplier of 11.

10.Insofar as the Income tax slab rates for individual for FY 2017-18, upto Rs.2,50,000/- income tax is nil and from Rs.2.5 lakhs to Rs.5 lakhs income tax is at 5% and from Rs.5 lakhs to Rs.10 lakhs it is 10%. If the same is applied, the total tax comes to Rs. 12,500/- and if the same is deducted, the total income comes to Rs. 4,77,647/- and if one fourth is deducted towards personal expenditure of the deceased the total income comes to Rs. 3,58,235/- and if the same is multiplied multiplier of 11 applicable to the age group of 54 the loss of dependency comes to Rs. 39,40,587.75/-. The other conventional heads ie.,loss of consortium to the first petitioner and loss of parental consortium to the Petitioners 2 to 5 are enhanced from Rs.35,000/- each to Rs. 40,000/- each and the total comes to Rs.2 lakhs.Transport expenses awarded by the Tribunal at Rs.10,000/- is confirmed, loss of estate awarded at Rs.10,000/- is enhanced to Rs.15,000/- and award of Rs. 10,000./- awarded by the Tribunal towards funeral expenses is enhanced to Rs.15,000/-. Thus the total compensation payable to the claimants is Rs.41,80,587.75/- which is tabulated as follows:

S.No	Name of the heads	Awarded by the Tribunal	Awarded by this Court	Remarks
1	For loss of dependency	Rs. 11,97,900/-	Rs. 39,40,587.75/-	enhanced
2	For loss of consortium to the first petitioner and loss of parental consortium to the petitioners 2 to 5	Rs. 1,40,000/- +Rs. 35,000/- (Rs. 1,75,000/-)	Rs. 2,00,000/- (Rupees 40,000/- each)	enhanced
3	For funeral expenses	Rs.10,000/-	Rs.15,000/-	Enhanced
4	For loss of estate	Rs.10,000/-	Rs.15,000/-	Enhanced
5.	For transport expenses	Rs.10,000/-	Rs.10,000/-	Same

6.	Total	Rs. 14,02,900/-	Rs. 41,80.587.75/-	enhanced

With interest at the rate of 7.5%p.a., from the date of claim petition till the date of realization.

11. In the result, the Civil Miscellaneous Appeal is allowed and enhancing the compensation from Rs.14,02,900/- to Rs. 41,80,587.75/- with interest at the rate of 7.5%pa., from the date of claim petition till the date of realization. The respondent/Insurance Company is directed to deposit the enhanced award amount with accrued interest and costs, less the award amount, if any already deposited, to the credit of claim petition before the Tribunal within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made the claimants are entitled to equal share ie.,Rs.8,36,115.55/- each with proportionate accrued interest and costs, less the amount already withdrawn if any, by filing necessary application before the Tribunal. The claimants are directed to pay the excess court fee towards the enhanced award amount as ordered by this Court. Only after such payment being made towards excess court fee, Registry is directed to draft the decree in the appeal. No costs.

26.04.2023

Index:Yes/No
Internet:Yes/No
NCC:Yes/No
vsn

To

1.The Motor Accidents Claims Tribunal,
Special District Judge,
Trichirappalli.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

N.SATHISH KUMAR.,J.

vsn

JUDGMENT MADE IN

C.M.A(MD)No.321 of 2023
and
C.M.P(MD)No.3963 of 2023

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