BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **06.06.2023**

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A(MD)No.702 of 2022

1.A.Jospin Geetha @ Geetha

2.A.Kulanthai Yesudhas

3.A.Jeya Priyanka :Appellants/Petitioners

/vs/

T.Subramanian(died)

1.Liberty Videocon General Insurance Company Limited,
10th Floor, Tower A,
Peninsula Business Park,
GanapatraKadam Marg Lower Parel,
Delisle Road,
Mumbai 4000 013.

2.S.Muniyasaraswathy :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.390 of 2017, dated 20.4.2022, on the file of the Motor Accidents Claims Tribunal(Principal District Judge), Thoothukudi.

For Appellants :Mr.I.Robert Chandrakumar

For Respondent-1 :Mr.V.Sakthivel

For Respondent-2 :Mr.N.Ramesh Arumugam

JUDGMENT

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This Civil Miscellaneous Appeal has been filed by the claimants seeking enhancement of compensation.

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

3.The deceased Arul Sahaya Kennady @ Kennady, aged about 50 years, on 4.9.2017 while he was proceeding in his bicycle on the left side of Thoothukudi South Beach Road from south to north, the first respondent drove his bike bearing Registration No. TN 72 AJ 7275 in the same direction on the said road in a rash and negligent manner and dashed against the deceased from his behind. As a result, the deceased Kennady sustained multiple grievous injuries and rushed to the hospital and he died on 4.9.2017. The second respondent is the insurer of the first respondent vehicle. Hence the wife and children claimed compensation.

4.The second respondent took a stand that the first respondent has no licence at the time of accident and the accident took place due to the negligence on the part of the first respondent.

The third respondent legal heirs of the first respondent took a stand that he has spent some amount towards the medical expenses. Hence he disputed the claim.

5.Before the Tribunal, on the side of the Petitioners, P.W.1 and P.W.2 are examined and Ex.P1 to Ex.P12 were marked. On the side of the respondents, R.W.1 and R.W.2 were examined and Ex.R1 to Ex.R4 were marked.

6.The Tribunal, after analyzing the evidence on record, found that the first respondent was rash and negligent in driving the motor cycle. However, the Tribunal fixed the Annual income at Rs. 30,000/- per year and deducted one third of the income towards the personal expenditure of the deceased and awarded the compensation as follows:

1.Loss of dependency	- Rs.2,60,000/-
2.Spousal consortium to the first Petitioner	-Rs.44,000/-
3.Loss of Estate	-Rs.16,500/-
4.Funeral expenses	-Rs.16,500/-
total	-Rs3,37,000/-

Challenging the same, the present Civil Miscellaneous Appeal has been filed seeking enhancement of compensation.

7.The learned counsel for the appellants would subit that the deceased was a Loadman, aged about 50 years at the time of accident and he was earning substantial amount ie., more than Rs. 12,000/- and even if Minimum Wages Act is applied, he would have easily earn a sum of Rs.12,000/-p.m and hence prayed for enhancement of compensation.

8.The learned counsel for the Insurance Company fairly submitted that the notional income fixed by the Tribunal is very low and a reasonable amount has to be fixed as notional income of the deceased.

9.In the light of the above facts, now the point that arose for consideration is as follows:

1.Whether the Tribunal is right in fixing the notional income of the deceased at 30,000/-per year?

10.Negligence on the part of the first respondent is not disputed. Except the Insurance Company, others have not contested the matter before this Court. The age of the deceased is 50 years at the time of accident, which has been established on record as per the Aadhaar Card. However, the trial Court has fixed the notional income at Rs.30,000/- per year. It is relevant to note that on 4.9.2017, the deceased died, which is not disputed. It is to be noted that even a Loadman now a days are able to earn more than Rs.400/- per day and even if Minimum Wages Act is applied, the deceased would have earned Rs.12,000/- per month. Therefore the Tribunal fixing notional income at Rs.30,000/- per year is very low and without any basis. Therefore, this Court is of the view that to arrive at a just and reasonable compensation to the legal heirs of the deceased, fixing the notional income at Rs.12,000/- per month seems to be reasonable and accordingly fixed the notional income at Rs.12,000/- per month. If 25% is added towards the future prospects of the deceased, the monthly income would be Rs. 15,000/- and if one third of the amount is deducted towards the personal income of the deceased, the monthly income comes to Rs. 10,000/- and the proper multiplier for the age group of the deceased is '13' and if the same is applied, the loss of dependency comes to Rs.15,60,000/-(Rs.10,000/-x 12 x 13). Further, the Tribunal has not awarded any amount towards the loss of love and affection to the Petitioners 2 and 3 and hence this Court awards a sum of Rs.40,000/-each to the Petitioners 2 and 3, which comes to Rs.80,000/-.The other heads ie.,Spousal consortium to the first

Petitioner-wife at Rs.44,000/-, loss of estate at Rs.16,500/- and funeral expenses at Rs.16,500/- are confirmed and thus the compensation is arrived as follows:

S.No	Name of the heads	Awarded by the Tribunal	Awarded by this Court	Remarks
1	For loss of dependency	Rs. 2,60,000/-	Rs. 15,60,000/-	enhanced
2	Spousal consortium to the first Petitioner/wife	Rs.44,000/-	Rs.44,000/-	same
3	For loss of estate	Rs.16,500/-	Rs.16,500/-	same
4	For funeral expenses	Rs.16,500/-	Rs.16,500/-	same
5.	For loss of love and affection to the Petitioners 2 and 3	----	Rs.80,000/- (Rs.40,000/- each)	Newly awarded
6	Total	Rs.3,37,000-	Rs. 17,17,000/-	enhanced

Thus the total compensation payable to the Petitioners is Rs. 17,17,000/- rounded off to Rs.17,20,000/- 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 enhancing the compensation from Rs.3,37,000/- to Rs.17,20,000/-

with interest at the rate of 7.5%p.a., from the date of claim petition till the date of realization. The first respondent Insurance Company is directed to deposit the above said modified enhanced award amount with accrued interest and costs, less the award amount already deposited,if any, to the credit of claim petition before the Tribunal, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit being made, the first petitioner is entitled to a sum of Rs.10 lakhs and the second and third petitioners are each entitled to equal share in the balance award amount, with proportionate accrued interest and costs, less the award amount, if any already withdrawn, by filing necessary application before the Tribunal. The first respondent Insurance Company is directed to deposit the enhanced award amount at the first instance and then to recover the same from the second respondent herein, as per law, as ordered by the Tribunal. The Petitioners/claimants are directed to pay the excess Court fee, if any, towards the enhanced award amount to the credit of Registry. Only on such payment being made, Registry is directed to draft the decree in the appeal. No costs.

06.06.2023

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

To

1. The Motor Accidents Claims Tribunal,
   (Principal District Judge),
   Thoothukudi.

2. The Section Officer,
   V.R.Section,
   Madurai Bench of Madras High Court,
   Madurai.

N.SATHISH KUMAR.,J.

vsn

JUDGMENT MADE IN
C.M.A(MD)No.702 of 2022

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