BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 15.11.2022

Pronounced On : 13.02.2023

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.841 of 2021
and
C.M.P.(MD)No.7778 of 2021

1.Sakthivel

2.Appammal : Appellants

Vs.

1.Kala

2.Minor.Mutharasu

3.Sri Kannan Departmental Store Limited,
Door No.130, Rajaji Street,
Ram Nagar, Coimbatore.

4.The Branch Manager,
The Oriental Insurance Company Ltd,
D.O.3, India Life Building,
Trichy Road, Coimbatore. : Respondents

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to allow this appeal and enhance the compensation awarded in M.C.O.P.No.73 of 2018 on the file of the

Motor Accident Claims Tribunal/Principal District Judge, Dindigul, dated 07.12.2020 in so far as the appellants/respondents 3 and 4 are concerned.

For Appellants : Mr.C.R.Nirmal,

For Respondents : Mr.N.Sudhagar Nagaraj, for R and R2

: Mr.C.Jawahar Ravindran, for R4.

: No Appearance, for R3.

J U D G M E N T

The Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.73 of 2018, dated 07.12.2020 on the file of the Motor Accident Claims Tribunal/Principal District Judge, Dindigul.

2. Admittedly, the respondents 1 and 2 have laid the claim petition, claiming compensation for the death of one Vijayakumar, who died in an accident occurred on 04.03.2017, against the the respondents 3 and 4. The respondents 1 and 2/claimants have also impleaded the appellants, who are the parents of the deceased Vijayakumar as respondents 3 and 4 in the claim petition.

3. During enquiry before the Tribunal, the first claimant has examined herself as P.W.1 and one Selvaraj as P.W.2 and exhibited five documents as Ex.P.1 to Ex.P.5. The respondents have adduced neither oral nor documentary evidence.

4. The learned trial Judge, upon considering the evidence, both oral and documentary and on hearing the arguments of both the sides, has passed the impugned award, dated 07.10.2020, directing the respondents 3 and 4 to pay compensation of Rs.14,91,200/- with interest at 7.5% per annum and costs to the respondents 1 and 2 and the appellants/respondents 3 and 4. The Tribunal has apportioned the compensation by awarding a sum of Rs.7,45,600/- to the first claimant; Rs.6,71,040/- to the minor/second claimant; Rs.24,560/- to the first appellant and Rs.50,000/- to the second appellant. Aggrieved by the said quantum of compensation awarded to the appellants, they have preferred the present appeal.

5. During the pendency of the appeal, they have raised additional grounds challenging the quantum of compensation arrived at by the Tribunal.

6. The leaned counsel for the appellants would submit that the deceased was engaged in the business of distributing mineral water to his customers and was earning sum of Rs.30,000/- per month; that the Tribunal without considering the same has fixed notional income of the deceased at Rs.7,000/- with 40% future prospects and that the Tribunal ought to have taken the notional income of the deceased at Rs.15,000/- with 40% future prospects.

7. Admittedly, neither the claimants nor the appellants have produced any material or documents to substantiate their claim that the deceased was engaged in the business of distributing the mineral water and was earning Rs.30,000/- per month.

8. In the absence of any evidence, taking note of the age of the deceased, the Tribunal has rightly fixed the monthly income of the deceased at Rs.7,000/- and has rightly added 40% of the income as future prospects and arrived at Rs.1,17,600/- per annum.

9. Considering the number of dependants, the Tribunal has rightly deducted 25% of the income towards personal and living expenses of the deceased and has rightly applied the multiplier at '16' and arrived at compensation of Rs.14,11,200/- for loss of dependency. The Tribunal has further awarded Rs.15,000/- for loss of estate and Rs.15,000/- for funeral expenses under the conventional heads.

10. The learned counsel for the appellants and the claimants would submit that the Tribunal has awarded Rs.40,000/- towards spousal consortium and failed to award any amount towards parental and filial consortium.

11. Our Hon'ble Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi and others** reported in **2017(2) TNMAC 609,** has permitted to award Rs.40,000/- towards spousal consortium. But, subsequently, Hon'ble Supreme Court in ***Magma General Insurance Company Ltd, Vs. Nanu Ram alias Chuhru Ram and others*** reported in ***(2018) 18 SCC 130***, has held that the right to consortium would include the company, care, help, comfort, love and affection, guidance, solace, etc., which is a loss to his family. Honourable

Supreme Court interpreted consortium to be a compendious term, which encompasses (i) spousal consortium, to be awarded to the surviving spouse, (ii) parental consortium to be awarded to the children upon the premature death of their parents and (iii) filial consortium to be awarded to the parents for the loss of their children. Recently, Hon'ble Apex Court in ***The New India Assurance Company Ltd. Vs. Smt.Somwati and others***, has reiterated the above position and further held that the amount to be awarded for loss of consortium will be as per the amount fixed in ***Pranay Sethi's*** case. But, at the same time, they have specifically observed that no amount should be awarded under the separate head of loss of love and affection.

12. Considering the above, the appellants being the parents and the second claimant being the minor son of the deceased, are certainly entitled to get Rs.40,000/- towards parental consortium and filial consortium. Hence, they are entitled to get total compensation of Rs. 16,11,200/-.

13. The main contention of the appellants is that the Tribunal by apportioning huge amounts to the claimants, has awarded very meagre amount to the appellants.

14. As already pointed out, the first appellant father was allotted Rs.24,506/- and the second appellant was allotted Rs.50,000/-.

15. No doubt, the widowed wife and the minor children of the deceased are certainly entitled to get more amount from the award. But, at the same time, the parents of the deceased are also entitled to get good amounts. The parents of the deceased should be given reasonable amounts from the award.

16. As rightly contented by the learned counsel for the appellants, the amounts awarded to the appellants are very low and the compensation awarded to the parents of the deceased should not be a pittance.

17. Considering the above, this Court decides that the appellants are entitled to get Rs.1,00,000/- and Rs.3,00,000/- respectively; that the first claimant is entitled to get Rs.7,00,000/- and the second claimant is entitled to get Rs.5,11,200/-.

18.Considering the above, this Court decides that the claimants are entitled to get compensation under the various heads as follows:

Head of compensation	Amount awarded by the tribunal	Amount confirmed/ modified by this Court
Loss of dependency	Rs.14,11,200/-	Rs.14,11,200/-
Loss of estate	Rs.15,000/-	Rs.15,000/-
spousal consortium	Rs.40,000/-	Rs.40,000/-
Filial consortium (appellants 1 and 2) (Rs.40,000+Rs.40,000)	----	Rs.80,000/-
Parental consortium (2nd Claimant)	----	Rs.40,000/-
Funeral expenses	Rs.15,000/-	Rs.15,000/-
Transport Expenses	Rs.10,000/-	Rs.10,000/-
Total	Rs.14,91,200/-	Rs.16,11,200/-

19.In the result, the Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the tribunal at Rs.14,91,200/- is enhanced to Rs.16,11,200/-. Out of the said compensation amount, the first claimant/wife of the deceased is entitled to get Rs.7,00,000/-, minor claimant is to be given Rs.5,11,200/- and the appellants/parents of the deceased are entitled to get Rs.1,00,000/- and Rs.3,00,000/- respectively. The fourth respondent/Insurer is directed to deposit the modified amount with interest at 7.5% per annum, if not already deposited. The Tribunal is directed to deposit the share of the minor claimant in any one of the Nationalized Bank in a fixed deposit scheme, till he attains majority. The mother and guardian of the minor claimant is permitted to withdraw the accrued interest once in three months directly from the Bank only for the welfare of the minor. The appellants and the first respondent are permitted to withdraw the award amount with accrued interest and costs, less amount already withdrawn, if any, on due application before the Tribunal. Parties are directed to bear their own costs. Consequently, connected Miscellaneous Petition is closed.

13.02.2023

NCC : Yes/No
Index : Yes : No
Internet : Yes : No
das

To

1.The Motor Accident Claims Tribunal/
Principal District Judge, Dindigul.

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

K.MURALI SHANKAR,J.

das

Pre-deliver order made in
C.M.A(MD)No.841 of 2021
and
C.M.P.(MD)No.7778 of 2021

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