IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2024

C O R A M

THE HON'BLE MR. JUSTICE **KRISHNAN RAMASAMY**

C.M.A.No.1895 of 2022

1.Madhan
2.Kannagi
3.Jayalakshmi
4.Saravanan
5.Veni

...Appellant

Vs

1.M/s.Associates Road Carriers Limited,
NH47, Avinashi Main Road,
Thennampalayam Junction,
Palladam Post & Taluk,
Coimbatore District.

2.M/s.HDFC Ergo General Insurance Company Ltd.,
Rep by its Manager,
No.528/529, Anna Salai,
Chennai 600 018.

... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree made in MCOP.No.752 of 2014 dated 16.09.2019 on the file of the Motor Accident Claims Tribunal (Special District Judge), Dharmapuri and enhance the award.

For Appellant : Mr.S.Sathiaseelan
For Respondent : Mr.N.Somasundar for R2

JUDGMENT

This civil miscellaneous appeal has been filed challenging the judgment and decree dated 16.09.2019 in MCOP.No.752 of 2014.

2. The learned counsel for the claimant would submit that on 11.10.2013, while one Mangai was walking at Kamaraj Nagar Road Junction, a Lorry bearing Registration No.TN-39-AP-1197, came in a rash and negligent manner and dashed against her, due to which she was admitted at Government Dharmapuri Medical College Hospital and died during treatment on 18.11.2013. Considering all the aspects, the Tribunal had awarded the compensation in the following manner:

S.No	***Heads***	***Compensation (Rs.)***
1	Compensation for Pecuniary Loss	1,35,000
2	Loss of Estate	15,000
3	Funeral Expenses	15,000
	Total	1,65,000

3. The learned counsel for the appellants would submit that due to the

accident, which was occurred in the year 2013, the deceased was admitted in the Hospital till 18.11.2013 and thereafter she died. At the time of accident, the deceased, who was aged about 80 years old, was working as a milk-vendor. When such being the case, the Tribunal should have awarded a sum of Rs.9,000/- as notional income of the deceased. However, only a sum of Rs.3,000/- was fixed by the Tribunal as notional income and the same is too low. Hence, she requests this Court to enhance the same.

4. Further, he would submit that there are 5 claimants and hence, the Tribunal had rightly deducted 1/4th towards personal expenses of the deceased. In support of his contention, he referred a judgment rendered by this Court in CMA.No.1664 of 2018, wherein, a sum of Rs. 9,000/- has been fixed as notional income of the deceased, who was aged about 80 years old. Further, he would contend that no amount was awarded towards Transportation, Loss of Consortium and Loss of Love and Affection. Hence, she requests this Court to re-determine the same.

5. On the other hand, the learned counsel for the respondent would

submit that the accident was occurred in the year 2013, whereas the appeal (CMA.No.1664 of 2018) referred by the appellants, wherein a sum of Rs.9,000/- was fixed as notional income, is pertaining to the year 2016.

6. He would refer to the judgement of this Court in ***Selvambal @ Tamilarasi and others vs. Lenin and others*** (CMA.Nos.1701 and 1702 of 2019), wherein for the accident occurred in the year 2014, a sum of Rs.6,000/- has been fixed as notional income of the deceased, who is aged about 80 years old. He would also refer to another judgment of this Court in ***Thilagavathy and others vs. K.Thangadurai and another*** (CMA.No.255 of 2011), wherein for the accident occurred in the year 2006, a sum of Rs.3,000/- has been fixed as notional income of the deceased, who is aged about 80 years old. Hence, he would request this Court to fix any reasonable amount from Rs.3,000/- to Rs.6,000/- as notional income of the deceased. With regard to all the other heads, he would submit that any reasonable amount may be fixed in accordance with the settled principles of law.

7. Heard the learned counsel for the appellant and the respondents and

also perused the documents available on records.

8. In the present case, the accident was occurred in the year 2013 and at the time of accident, the deceased, who was aged about 80 years old, had undergone treatment and died on 18.11.2013. There is no dispute with regard to the occurrence of accident and fixation of negligence. The only aspect that has to be decided is with regard to the quantum of compensation awarded by the Tribunal. While awarding compensation towards loss of income, the Tribunal fixed the notional income as a sum of Rs.3,000/- and applied 5 as multiplier and deducted 1/4th towards personal expenses.

9. As far as deduction towards personal expenses of the deceased is concerned, in the present case, the claimants are not the dependents of the deceased, since they got married. Further, considering the age of the deceased, it appears that the deceased would have not contributed to take care of her married sons and daughters, in which case, only the deceased was a dependent to the claimants. It was submitted by the learned counsel for the appellant that even after the claimants got married, the deceased earned money by virtue of

milk vending and provided the same to her married sons and daughters and hence, the claimants are the dependents of the deceased. However, this Court feels that at the age of 80 years, a person may earn by virtue of milk vending only to meet out her livelihood and in such case, the submission made by the learned counsel for the claimants that the claimants, who are the married sons and daughters of the deceased, were dependents of the deceased, appears to be unbelievable. Therefore, this Court came to a conclusion that the claimants are not the dependents of the deceased but legal representatives. When such being the case, the $1/4^{th}$ deduction towards the personal expenses of the deceased made by the Tribunal is not just and fair. Since there were no dependents to the deceased, this Court is inclined to deduct 50% towards the personal expenses of the deceased.

10. As far as notional income of the deceased is concerned, in the case of ***Syed Sadiq and others vs. Divisional Manager, United India*** reported in ***MANU/SC/0033/2014***, for the accident occurred in the year 2008, the Hon'ble Apex Court had fixed a sum of Rs.6,500/- as notional income of the deceased vegtable vendor, whereas in the present case, though the deceased was working

as a milk vendor, since she was aged about 80 years old, she may not be able to go in and around to sell milk and in such case, her income will get reduced. Hence, considering the law laid down by the Hon'ble Apex Court and this Court in the case laws referred by the learned counsel for the respondent and considering the year of accident and by applying cost inflation index, this Court is inclined to fix a sum of Rs.6,000/- as notional income of the deceased. Therefore, a sum of Rs.6,000/- is fixed as notional income in all aspects and accordingly, by applying 5 as multiplier and deducting 50% towards personal expenses of the deceased, the loss of income would be calculated as follows:

Rs.6,000/- (notional income) * 12 (months) * 5 (multiplier)
* 1/2 (deduction towards personal expenses) = Rs.1,80,000/-

11. Further, the learned counsel for the appellants had submitted that no amount was awarded towards loss of consortium to the claimants, since they are married sons and daughters of the deceased. Per contra, the learned counsel for the respondent would submit that since the claimants are not the dependents of the deceased, they are not entitled for compensation towards loss of consortium. With regard to the said aspect, this Court had already arrived at a conclusion

that the claimants are not dependents of the deceased and hence, as contended by the learned counsel for the respondent, they are not entitled for loss of consortium. However, though they are not dependents to the deceased, as the sons and daughters of the deceased, they are still entitled for loss of love and affection and hence, this Court is inclined to award a sum of Rs.15,000/- each towards loss of love and affection. Accordingly, a sum of Rs.75,000/- has been fixed towards the loss of love and affection.

12. Further, it appears that no amount was awarded towards Transportation and hence, this Court is inclined to award a sum of Rs.10,000/- towards Transportation. That apart, since the deceased had undergone treatment for a period from 11.10.2013 to 18.11.2013, this Court is inclined to grant a sum of Rs.20,000/- towards Pain and Sufferings. With regard to the all the other heads, since the compensation awarded by the Tribunal appears to be just and fair, the same stands confirmed.

13. Accordingly, the compensation awarded by the Tribunal is modified

as follows:

S.No.	***Heads***	***Compensation awarded by Tribunal (Rs.)***	***Compensation awarded by this Court (Rs.)***
1	Compensation for Pecuniary Loss	1,35,000	1,80,000
2	Loss of Estate	15,000	15,000
3	Funeral Expenses	15,000	15,000
4	Transportation	Nil	10,000
5	Pain and Sufferings	Nil	20,000
6	Loss of Love and Affection	Nil	75,000
	Total	1,65,000	3,15,000

14. Therefore, the amount awarded by the Tribunal is modified as a sum of Rs.3,15,000/-. Accordingly, the award amount stands increased from a sum of Rs.1,65,000/- to Rs.3,15,000/-. It is also made clear that the compensation will be awarded to the claimants in the following proportions:

i) Claimants 1 and 4 – Rs.50,000/- each

ii) Claimants 2 and 3 – Rs.70,000/- each

iii) 5th claimant – Rs.75,000/-

15. In the result, this Civil Miscellaneous Appeal is partly allowed and

the 2nd respondent is directed to deposit a sum of Rs.3,15,000/- along with interest and costs, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment, to the credit of MCOP.No.752 of 2014 on the file of the Motor Accident Claims Tribunal (Special District Judge), Dharmapuri. Upon such deposit, the Tribunal is directed to transfer the award amount to bank account of the claimants, by way of RTGS, as per the proportion determined by this Court, within a period of three weeks from the date of deposit and receipt of the Bank details obtained from the claimants. No costs.

14.03.2024

Index: Yes/No
Internet:Yes/No
Speaking order/Non-speaking order
nsa

KRISHNAN RAMASAMY,J.

nsa

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