IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved On : 19.07.2023

Judgment Delivered On : **02.02.2024**

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THE HONOURABLE MR. JUSTICE P.VELMURUGAN

C.M.A.No.2133 of 2018

1.S.Tamilselvan
2.Devika
3.T.Suresh Babu ... Appellants

Versus

1.S.Thangaraj
2.The New India Assurance Company Limited,
No.45, Moore Street, 5th Floor,
Chennai – 1. ...Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to allow the appeal and to enhance the amount awarded in M.C.O.P.No.7124 of 2013, dated 23.03.2018, on the file of the Motor Accident Claims Tribunal, Small Causes Court, (Special Sub Court), Chennai.

For Appellants : Mr. K. Varadha Kamaraj

For Respondents : Ex-parte (R1) before the Tribunal
: Mr. J. Chandran (for R2)

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellants/claimants for enhancement of compensation awarded by the Motor Accident Claims Tribunal, Small Causes Court, (Special Sub Court), Chennai in Award dated 23.03.2018 made in M.C.O.P.No.7124 of 2013.

2. The appellants are the claimants and the respondents are the owner and the insurance company of the offending vehicle.

3. The brief facts of the case of the appellants/claimants are that the deceased/K.Ladshmibai was the wife of the first appellant and mother of the second and the third appellants. On 25.10.2013 at about to 22.40 hours, the deceased was travelling as pillion rider on the motor cycle bearing Registration No.TN-18-A-9204 along with her husband as a rider from the West to East direction. When the vehicle was nearing Kamarajar Salai in front of Parveen Marriage Hall, Matthur, one container Lorry bearing Registration No.TN-47-J-1159, which was driven by its driver, which belongs to the first respondent and insured with the second respondent/ Insurance Company, drove on the same direction in a rash and negligent manner without following the road traffic Rules and hit behind the motorcycle of the first appellant, in which the deceased was travelling as pillion rider. Due to said accident, the deceased and the first appellant/claimant fell down from the motor-cycle, and deceased being a pillion rider, sustained fatal injuries and the first appellant/claimant sustained injuries on his right leg. Both of them were taken to the Government Stanley Hospital and on the way to the hospital, the deceased

died due to the head injury. The accident has occurred only due to rash and negligent driving of the driver of the Lorry and the second respodent being the insurer of the Lorry, owned by the first respondent, are jointly and severally liable to pay the compensation. Therefore, the appellants/claimants filed a claim petition before the Tribunal claiming a sum of Rs.60,00,000/- as compensation.

4. In the counter affidavit filed by the second respondent/Insurance Company before the Tribunal, which was adopted by the first respondent/owner of the vehicle, it is stated that the container Lorry bearing Registration No.TN- 47-1159 was not involved in the alleged accident and the driver of the Lorry also has not possessed valid and effective driving licence at the time of accident. Therefore, the appellants/claimants have to prove as to whether the driver of the container Lorry had valid and effective permit and FC, or not ; and the accident occurred due to rash and negligent driving by the driver of the first respondent's vehicle. In the absence of oral and documentary evidence to prove the possession of valid licence by the driver, the appellants/claimants are not entitled to claim any compensation for the injuries sustained by the first appellant and the death of his wife from the second respondent/

Insurance Company as well as the first respondent/owner of the offending vehicle.

5. Before the Tribunal, in order to substantiate the case of the appellants/claimants, on the side of the appellants, two witnesses were examined as PW.1 and P.W.2 and as many as 20 documents were marked as Ex.P1 to P20. On the side of the respondents, no oral and documentary evidence was adduced before the Tribunal.

6. Considering the oral and documentary evidence placed before the Tribunal and after hearing the learned counsel on either sides, the Tribunal awarded a sum of Rs.15,36,500/- as compensation to the appellants/claimants. Not being satisfied with the same, the appellants/claimants have filed the present appeal for enhancement of compensation. The first respondent, owner of the Lorry was set *ex-parte* before the Tribunal.

7. The learned counsel for the appellants/claimants submitted that, the respondents have not filed any appeal against the Award passed by the Tribunal and/or denied the liability. The compensation awarded by the

Tribunal is very meager and it may be enhanced. Though the Tribunal has rightly arrived at the income of the deceased, it has wrongly fixed half of the salary of the deceased, for calculation, which is against the gross income, since the deceased was having only six years of service at the time of the accidental. It is the main contention of the learned counsel for the appellants/claimants that, at the time of the accident, the deceased was 53 years old, and adopted multiplier “11” was adopted by the Tribunal for calculating the income of the deceased. There are three dependants to the deceased, and therefore, the Tribunal ought to have deducted 1/3rd of the income for her personal expenses and the remaining 2/3rd have to be taken for arriving at the income of the deceased and after adopting the multiplier “11”, it has erroneously applied split up method for calculation. Therefore, the Award passed by the Tribunal does not reflect as “just compensation” and the multiplier method requires to be re-calculated.

8. The learned counsel for the second respondent/Insurance Company submitted that considering the facts of the case and the number of dependants, the Tribunal awarded just and fair compensation and there is no merit in the appeal filed by the appellants/claimants for enhancement of compensation, and therefore, the appeal may be dismissed.

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

10. Though the respondents denied the manner of the accident, they have not challenged the liability fixed by the Tribunal. The appellants/claimants alone have filed the present appeal for enhancement of compensation. Since the respondents have not denied the findings about the manner of the accident and the liability fixed by the Tribunal, this Court straight away appreciates the evidence with regard to the quantum of compensation alone and this Court, as an appellate Court, cannot traverse beyond the scope of appeal.

11. As per the post-mortem certificate, service register and school register, at the time of accident, the deceased was aged 53 years and it is clear that she died due to the multiple injuries sustained during the accident. In order to prove the age of the deceased, the first appellant marked Ex.P8/ school leaving certificate of the deceased. As per Ex.P8, the date of birth of the deceased was 14.12.1959. The date of death and accident occurred on 25.10.2013, and at that time, the age of the deceased was 53 years, which was also proved.

12. As far as the income of the deceased is concerned, it is stated that she was working as BCR Mail Woman in Madras Packet Sorting Office, Madras sorting division, Egmore, Chennai and earning a sum of Rs.27,899/- per month. As per the last pay drawn certificate, dated 18.01.2018/Ex.P18, the salary was mentioned as Rs.25,466/- (excluding TA of Rs.3,040/- and WA of Rs.75/-), and therefore, the annual income was calculated as Rs.3,05,592/- (Rs.25,466 x 12) and 10% towards Income Tax for the exemption of Rs.2,50,000/-. After deducting, the annual income was arrived at Rs.3,00,032.80/-. As per ***Pranay Sethi case,*** the Apex Court fixed the future prospects between the age 50 to 60 years as 15%. Therefore, considering the age of the deceased as 53, the sum arrived at 15% is Rs.3,45,037.72/- (Rs.3,00,032.80/- + 15%) towards future prospects. It is well settled proposition of law that the compensation is arrived at based on the dependants of the family of the deceased. The first appellant is the husband of the deceased, who is a retired Government employee, and he is drawing pension. The second appellant is a married daughter and the third appellant/son is a Graduate. In view of that, the Tribunal deducted 50% of the income from the salary towards personal expenses and also adopted proper multiplier “11” for the age of 53 years. The Tribunal has also kept in mind the same and calculated the income properly. Therefore, according to

the age of the deceased and deducting 50% for personal expenses, this Court does not find any infirmity or perversity in the findings of the Tribunal.

13. However, a proof was submitted for the date of birth of the deceased as 14.12.1959, and the Tribunal calculated the income, based upon which, the deceased would retire at the age of 58 years, and it will be 31.12.2019 and considering the pay slip, the deceased would get full salary up to the age of 58 years and she would not get the entire salary after the age of 58 years and thereafter she will only get 50% of emoluments as pension. Therefore, the Tribunal adopted the split up method in multiplier “11” . According to this Court, the split up multiplier method adopted by the Tribunal is erroneous for two reasons: (i) Firstly, since the retirement age of the Government servant had been increased from 58 to 60 years, the retirement age of the deceased would be 31.12.2021 and not on 31.12.2019. (ii) Secondly, after the retirement it cannot be stated that the deceased would not have earned further. Therefore, calculation by split up method is erroneous. The deceased would have possibly retired, but still would have lived up to 90 years and earned the pension, and therefore, the split up multiplier method is not proper. Therefore, this Court finds that the split up multiplier adopted by the Tribunal is erroneous. Hence, the

appellants are entitled to get the compensation by adopting multiplier "11". The annual income is hereby enhanced from Rs.14,66,410.31/- to Rs.18,97,678/- towards Loss of Pecuniary Benefits.

14. As far as the compensation regarding the love and affection, the Tribunal awarded Rs.40,000/- towards loss of consortium to the first appellant, who is the husband of the deceased, but, failed to consider the love and affection for the second and third appellants being children of the deceased. Since there is no head to award the second and third appellant for love and affection, they are entitled for a sum of Rs.50,000/- each, (totally Rs.1,00,000/-) towards loss of love and affection. As far as the other heads of the compensation award amount are concerned, this Court does not find any reason to interfere with the same, which are just and proper compensation. The loss of income of the deceased is calculated as under :

= Rs.25,466 x 12 (annual income) = Rs.3,05,592
= Rs.3,05,592 – 2,50,000 (income tax exemption) = Rs.55,592
= Rs.55,592 – 10% (after deduction) = Rs.5,559.2%
= Rs.3,05,592 – Rs.5,559.2 = Rs.3,00,032.8 (after subtracting)
= Rs.3,00,033 x 15% (future prospects) = Rs.45,004.95
= Rs.3,00,033 + Rs.45,004.95 (adding 15%) = Rs.3,45,037.95
= Rs.3,45,037.95 – 50% Personal expenses
= Rs.1,72,518.975 (round off Rs.1,72,519) x "11" multiplier

= Rs.18,97,709/-.

Thus, the amount of Rs.14,66,410.31ps. awarded by the Tribunal towards loss of pecuniary benefits, is modified as loss of income, which is re-calculated and modified to Rs.18,97,709/-.

15. In effect, the amount of Rs.15,36,410.31/- awarded by the Tribunal as total compensation to the claimants is enhanced and modified and the break-up details of the compensation amount are as follows:-

Sl. No.	***Particulars***	***Amount awarded by the Tribunal***	***Amount granted by this Court***	***Award confirmed or enhanced or granted or reduced or set aside***
1.	Loss of pecuniary benefits (modified as Loss of Income)	Rs.14,66,410.31/-	Rs.18,97,709/-	Enhanced
2.	Loss of consortium	Rs.40,000/-	Rs.40,000/-	Confirmed
3.	Loss of Estate	Rs.15,000/-	Rs.15,000/-	Confirmed
4.	Funeral expenses	Rs.15,000/-	Rs.15,000/-	Confirmed
5.	Loss of love and affection to the appellants/claimants 2 and 3 is Rs.50,000/- each.	Nil	Rs.1,00,000/-	Granted
	Total	**Rs.15,36,410.31/-**	**Rs.20,67,709/-**	**Rs.5,31,298.69/- enhanced by** (Rs.15,36,410.31 – Rs.20,67,709)

16. In the result,

(i) This Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at **Rs.15,36,410.31/-** is hereby enhanced to **Rs.20,67,709/-** together with interest at the rate of 7.5% per annum from the date of filing of the claim petition till the date of deposit.

(ii) The second respondent / Insurance Company is directed to deposit the enhanced award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this Judgment, to the credit of M.C.O.P.No.7124 of 2013 on the file of the Motor Accident Claims Tribunal, (Special Sub Court No.2), Chennai.

(iii) On such deposit, the appellants are permitted to withdraw the award amount now determined by this Court as per the apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn.

(iv) The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the appellants/claimants, as laid down by a Division Bench of this Court in the case of ***The Divisional Manager, The Oriental Insurance Company Ltd., Kannur vs Rajesh and others in***

C.M.A.No.428 of 2016, dated 11.03.2016 reported in 2016 (2) LW 561.

(v) Since this Court has enhanced the compensation, the appellants/claimants are directed to pay necessary Court fee, if any, on the enhanced compensation. In other aspects, the awards of the Tribunal shall stand confirmed.

(vi) There shall be no order as to costs in the present appeal.

02.02.2024

Index : Yes/No
Speaking Order : Yes/No
Neutral Case Citation : Yes/No

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To

1.The Motor Accident Claims Tribunal,
Small Causes Court, (Special Sub Court No.2), Chennai.

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

P.VELMURUGAN, J.

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Pre-Delivery Judgment in

C.M.A.No.2133 of 2018

02.02.2024