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IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 30 / 07 / 2024

JUDGMENT PRONOUNCED ON : 12 / 08 / 2024

CORAM:

THE HON'BLE MR.JUSTICE R.SAKTHIVEL

CMA NO.771 OF 2022

1.Krishnaveni
2.Indumathi
3.Prabudeva

... Appellants / Petitioners

Versus

1.Nigal
(R-1 is given up since he was set
ex-parte in lower Court)

2.The Branch Manager
Reliance General Insurance Co. Ltd.,
No.89, Vivyn Plaza, 1st Floor,
100 Feet Road, Mudaliarpeta,
Puducherry.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, praying to set aside the award dated 20.02.2018 in M.A.C.T.O.P.No.215 of 2016 on the file of the Motor Accidents Claims

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Tribunal / II Additional District Judge, Puducherry.

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For Appellants : Mr.R.Sreedhar
For Respondent-1 : Set *Ex-parte*
For Respondent-2 : Ms.C.Bhuvanasundari

J U D G M E N T

Dissatisfied with the Award dated February 20, 2018, passed by the 'Motor Accidents Claims Tribunal / II Additional District Judge, Puducherry' [henceforth 'Tribunal'] in M.A.C.T.O.P.No.215 of 2016, the petitioners therein have filed this Civil Miscellaneous Appeal praying to enhance the award amount awarded by the Tribunal.

2.For the sake of convenience, the parties herein will be referred to as per their rank before the Tribunal.

Petitioners' case

3.On January 17, 2016, at about 08.45 p.m., the first petitioner's son namely Murali, was travelling as a pillion rider in the Hero Honda

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Passion Pro motorcycle bearing Registration No.PY-01-CG-1955 driven by one Ajith from Manaveli Road, Ariyankuppam Police Station, Puducherry.

While they were crossing the Puducherry to Cuddalore Main Road from east to west direction, the first respondent's Yamaha Ray motorcycle bearing Registration No.PY-01-CJ-5976 driven by one Mathankumar with two pillion riders was approaching from north to south direction, in a rash and negligent manner. It collided with the motorcycle on which Murali was travelling leading to an accident and thereby, Murali sustained injuries and died. The first petitioner is the deceased - Murali's mother while the second and third petitioners are siblings of the deceased - Murali.

3.1. According to the petitioners, prior to the accident, the deceased - Murali was working as a Car Tinkerer and thereby, earned a sum of Rs.20,000/- per month. The first respondent is the owner of the Yamaha Ray motorcycle bearing Registration No.PY-01-CJ-5976. The second respondent is the insurer of the first respondent's motorcycle. The rider of the first respondent's motorcycle is responsible for the accident. Therefore, the respondents 1 and 2 are jointly liable to pay compensation to the petitioners.

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Accordingly, the petitioners had filed a claim petition seeking compensation of Rs.20,00,000/- from the respondents before the Tribunal.

1st Respondent's case

4.The first respondent, who is the owner of the Yamaha Ray motorcycle bearing Registration No.PY-01-CJ-5976, remained absent and was set *ex-parte* before the Tribunal.

2nd Respondent's case

5.The second respondent / Insurance Company filed a counter wherein, they denied the manner of accident as alleged by the appellants / petitioners. According to the second respondent, the deceased - Murali was riding the motorcycle in an inebriated mood with two other pillion riders and suddenly crossed the road in a rash and negligent manner, thus inviting the accident. Furthermore, the first respondent also violated the policy conditions. Hence, the second respondent is not liable to pay compensation to the



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petitioners and the first respondent alone is responsible for compensation, if any awarded. The second respondent also denied the age, occupation and monthly income of the deceased and accordingly, prayed to dismiss the claim petition.

6.At trial, the third petitioner was examined as P.W.1 and the rider of the motorcycle, namely Ajith @ Manigandan was examined as P.W.2 and one Balachandar, the alleged employer of the deceased - Murali was examined as P.W.3 and Ex-P.1 to Ex-P.12 were marked on the side of the petitioners. Further, Ex-X.1 – Salary Certificate was marked through P.W.3. On the side of the respondents, three witnesses were examined as R.W.1 to R.W.3. and Ex-R.1 – Insurance Policy was marked.

Findings of the Tribunal

7.The Tribunal after considering the evidence and materials available on record, came to the conclusion that the rider of the motorcycle bearing Registration No. PY-01-CJ-5976 belonging to the first respondent was responsible for the accident. Since the first respondent's vehicle was



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insured with the second respondent at the time of accident, the Tribunal found that both respondents are jointly liable to pay compensation to the petitioners.

Regarding quantum of compensation, though the petitioners contended that the deceased was working under P.W.3 and earned a sum of Rs.650/- per day, the Tribunal disbelieved the evidence of P.W.3 and Ex-X.1 – Salary Certificate. Therefore, the Tribunal concluded that the deceased would have earned a sum of Rs.6,000/- per month. The Tribunal applied 40% future prospects and adopted a multiplier of 18 and deducted 50% as personal expenses of the deceased and arrived at a sum of Rs.9,07,200/- as compensation under the head 'loss of income'. The Tribunal awarded a sum of Rs.75,000/- under the head 'loss of love and affection' and Rs.15,000/- each under the heads 'funeral expenses' and 'loss of estate'. Thus, the Tribunal totally awarded a sum of Rs.10,12,200/- as compensation to the petitioners.

8.Dissatisfied with the quantum of compensation, the petitioners have filed this Civil Miscellaneous Appeal.

Arguments

9.Learned Counsel for the appellants / petitioners has submitted that the Tribunal failed to appreciate the evidence of P.W.3 and Ex-X.1 –

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Salary Certificate in the right manner. On the contrary, the Tribunal has taken a sum of Rs.6,000/- per month as notional income, which is on the lower side.

The learned Counsel further submitted that the deceased - Murali would have earned at least a sum of Rs.15,000/- per month. Accordingly, she prayed to allow the appeal and thereby, enhance the award amount.

10.Learned Counsel for the second respondent invited attention of this Court to column Nos.4 and 17 of the claim petition and contended that the petitioners, in column No.4, have stated that the deceased was working as a Banner Designing Worker. However, in column No.17, they have pleaded that the deceased was a Car Tinkering Worker and thereby, earned a sum of Rs.20,000/- per month. The third petitioner, who was examined as P.W.1, deposed that the deceased was a Car Tinkering Worker. On the contrary, P.W.3 deposed that the deceased was working as Banner Designer under him for past five years and earned a sum of Rs.650/- per day as daily wages. However, P.W.3 did not file any documents to support his evidence except Ex-X.1–Salary Certificate. In view of the contrary evidence, the Tribunal disbelieved the evidence of P.W.3 and fixed notional income at Rs.6,000/- per month. There is no warrant to interfere with the said findings. Accordingly,



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the learned counsel prayed to dismiss the Civil Miscellaneous Appeal.

Discussion and Decision

11.This Court has considered the submissions made on either side and perused the materials available on record.

12.The appellants / petitioners filed this Civil Miscellaneous Appeal seeking an enhancement of compensation. The second respondent / Insurance Company has not filed any appeal / cross objection. Hence, there is no need to delve into the facts pertaining to the manner of accident. The only concern here is the quantum of compensation.

13.Admittedly, the petitioners pleaded contradictory statements regarding avocation of the deceased. P.W.1 deposed that the deceased was engaged in Car Tinkering work. Per contra, the petitioners' side examined one Balachandar as P.W.3, who testified that the deceased was working under him as Banner Designing Worker, and earned a sum of Rs.650/- per day as daily wages. In view of the contradictory statements regarding avocation of the deceased, the evidence of P.W.3 requires corroboration. P.W.3 did not produce



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any documents to corroborate his own evidence and Ex-X.1 - Salary Certificate issued by him. In the absence of corroboration, this Court is of the view that the evidence of P.W.3 is not credible. Accordingly, this Court rejects the evidence of P.W.3 and the Salary Certificate marked as Ex-X.1.

14. At the time of accident, the deceased was a Bachelor aged 23 years old. According to the petitioners, they were dependent solely on the income of the deceased since the first petitioner's husband *i.e.*, the father of the deceased - Murali, passed away on December 27, 2015. The death certificate of husband of the first petitioner is marked as Ex-P.6.

15. Considering the age of the deceased, year of the accident, cost of living and price index prevailing at the time of accident, this Court is of the view that the deceased - Murali would have earned a sum of Rs.12,000/- per month. Applying 40% increase for future prospects and after deducting 50% as his personal expenses, and by adopting multiplier of 18 as per the judgments of the Hon'ble Supreme Court in *National Insurance Company Limited vs. Pranay Sethi & Others [2017 (16) SCC 680]* and *Sarla Verma*

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& Ors. Vs. Delhi Transport Corporation & Anr. [2009 (6) SCC 121], this

Court arrives at a sum of Rs.18,14,400/- as compensation under the head 'loss of income'.

16.The first petitioner is the mother and the second and third petitioners are the siblings of the deceased. The second and third petitioners were unmarried at the time of death of the deceased. Therefore, the second and third petitioners could be considered as 'dependents' of the deceased. Accordingly, the first petitioner is entitled to a sum of Rs.40,000/- towards filial consortium and the second and third petitioners are entitled to a sum of Rs.40,000/- **each** towards loss of love and affection. The petitioners are also entitled to a sum of Rs.15,000/- under the head 'funeral expenses' and another sum of Rs.15,000/- under the head 'loss of estate'.

17.Accordingly, the petitioners are entitled to get enhanced compensation of **Rs.19,64,400/- (Rupees Nineteen Lakh Sixty Four Thousand Four Hundred only)** from the second respondent / Insurance Company in the following manner:

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S.No.	Head	Amount Rs.
1	Loss of Income	Rs.18,14,400.00
2	Loss of Parental Consortium to the 1 st petitioner	Rs.40,000.00
3	Loss of love and affection to 2 nd and 3 rd petitioners	Rs.80,000.00
4	Funeral expenses	Rs.15,000.00
5	Loss of Estate	Rs.15,000.00
	Total	Rs.19,64,400.00

Conclusion

18.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal *viz.*, Rs.10,12,200/- is hereby enhanced to **Rs.19,64,400/- (Rupees Nineteen Lakh Sixty Four Thousand Four Hundred only)**. The second respondent / Insurance Company is directed to deposit the enhanced compensation along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit, less the amount if any already deposited to the credit of M.A.C.T.O.P.No.215 of 2016 on the file of Motor Accident Claims Tribunal, II Additional District Judge, Puducherry, within a period of eight (8) weeks from the date of receipt of a copy of this Judgment. Upon such deposit, the first petitioner is entitled to withdraw a sum of Rs.15,00,000/- along with interest, second and third

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petitioners are entitled to a sum of Rs.2,32,200/- **each**, along with interest by making necessary application before the Tribunal. The deficit court fee, if any, shall be paid by the appellants / petitioners within a period of four weeks from the date of receipt of a copy of this Judgment.

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Neutral Citation : Yes
Speaking order
TK

To

The Motor Accident Claims Tribunal
II Additional District Judge
Puducherry.

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PRE-DELIVERY JUDGMENT MADE IN
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