IN THE HIGH OF JUDICATURE AT MADRAS

DATED : 29.01.2024

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The Hon'ble Mr.Justice Krishnan Ramasamy

C.M.A.No.2759 of 2023

1. D.Nirmala
2. D.Parthiban
3. D.Sasikala ... Appellants

Vs.

1. S.Senthilkumar

2. Tata AIG General Insurance Co. Ltd.,
   No.1, Ground Floor, C.N.C. Road,
   Ethiraj Salai, Egmore,
   Chennai – 600 008. ...Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree, dated 07.09.2022 made in M.C.O.P.No.5555 of 2019, on the file of the Motor Accident Claims Tribunal/Chief Judge, Court of Small Causes, Chennai.

For Appellant : Mr.P.Rajalingam
Respondent-1 : Dispensed with
For Respondent-2 : Mr.J.Michael Visuvasam

JUDGEMENT

This Civil Miscellaneous Appeal is preferred by the claimants, aggrieved by the award passed by the Motor Accident Claims Tribunal cum Chief Judge, Court of Small Causes, Chennai, in M.C.O.P.No.5555 of 2019, (hereinafter, referred to as 'the Tribunal') dated 07.09.2022.

2. On 16.09.2019, at about 05.15 hours, when the deceased was walking on Wallajabad to Vandalur Salai, opposite to AKT Thirumana Mandapam, he was hit by a Private Bus, bearing Regn. No.TN-21-AT-4591, which came behind the back of the deceased, in a rash and negligent manner, and due to the said accident, the deceased sustained fatal injury and died on the spot.

3. The Tribunal, on consideration of both oral and documentary evidence held that the accident occurred due to rash and negligence on the part of the Driver of the first respondent's Vehicle, viz., Bus, and hence, directed the first and second respondents to pay jointly and severally a sum of Rs.16,02,000/- as compensation to the claimants together with interest at the rate of 7.5% p.a. from the date of filing of the Petition and till the date of realisation.

4. Aggrieved over the award passed by the Tribunal, the appellants/claimants have filed the present appeal seeking for enhancement of compensation.

5. Mr.P.Rajalingam, learned counsel appearing for the appellants contended that at the time of the accident, the deceased was doing a Real Estate Finance Business and was earning a sum of Rs.4,00,000/- p.a., and the appellants/claimants as proof to the same, have marked certain documents, however, the Tribunal, while determining the compensation under the head, 'Loss of Dependency', regardless of those documents, fixed only a Rs.15,000/ p.m. which has resulted in awarding a low compensation of Rs.14,52,000/-. Further, the learned counsel also drawn the attention of the Court to the documents marked before the Tribunal, viz., the Income Tax Returns filed by the deceased for the Assessment Years 2016-2019, the details of which are as follows:-

Sl.No.	***Ex.No.***	***AY***	***Total Income***
1	P.7	2016-17	Rs.3,00,000/-
2	P.8	2017-18	Rs.3,60,000/-
3	P.9	2018-19	Rs.3,57,300/-

5.1 Therefore, the learned counsel by referring to the above would submit that the Tribunal, based on those documents ought to have fixed a reasonable sum as monthly income of the deceased and prayed that a sum of Rs.30,000/- may be fixed as monthly income of the deceased of the deceased, as the same would be fair. Insofar as the award of compensation under other heads are concerned, the learned counsel has not dispute over the same and submitted that the same may be confirmed.

6. First respondent remained ex parte before the Tribunal, hence, notice to the first respondent is dispensed with by this Court vide order dated 22.08.2023.

7. Per contra, Mr.J.Michael Visuvasam, learned counsel for the second respondent/Insurance Company would submit that for all the three assessment years, which were referred to above, the deceased had filed the income tax returns only belatedly, i.e for the AYs 2016-17 and 2017-18, the ITRs were filed on 28.03.2018 and for AY 2018-19, ITR was filed on 31.08.2018. The learned counsel would submit that the deceased died due to the accident occurred on 16.09.2019, but, for the Financial Year 2018-19, the last date for filing returns was on 31.07.2019, however, the deceased has not chosen to file the returns, which would prove that since the deceased had no income, he has not filed returns in time and those ITRs documents were filed by the appellants/claimants only to suit their purpose for obtaining loan from the Bank and taking into consideration of all these aspects, the Tribunal has fixed the monthly income of the deceased at Rs.15,000/- which is just and fair. However, the learned counsel fairly suggested that a sum of Rs.20,000/- may be fixed as monthly income of the deceased.

8. I have given due considerations to the submission made by the learned counsel for the appellants and the learned counsel for the second respondent/Insurance Company and perused the materials available on record.

9. At the time of the accident, which occurred in the year, 2019, the deceased was a Real Estate Financier and earning Rs.4,20,340/- p.a. As proof, the appellants/claimants have marked Exs.P.7 to P.9, viz., Income Tax Returns filed by the deceased for the Assessment Years i) 2016-17, ii) 2017-18 and iii) 2018-19. Therefore, according to the learned counsel for the appellants, based on those documents, the Tribunal ought to have fixed a a reasonable sum as monthly income of the deceased, preferably, at a sum of Rs.30,000/-. Whereas, it is the contention of the learned counsel for the second respondent/Insurance Company that those documents can no longer be relied on as the same were filed by the appellants/claimants to suit their own purpose, inasmuch as, those documents were filed by the deceased only at the fag end of the assessment years and so far as the ITR filed for the Financial Year 2018-19 is concerned, the last date for filing the returns was 31.07.2019, and no returns were filed. Therefore, the Tribunal, while determining compensation towards Loss of Dependency, rightly ignored the same and fixed monthly income at Rs.15,000/- which is fair.

9.1 Thus, this Court, taking into consideration of the above submission and on perusal of records and considering the age (52 years) and occupation of the deceased (Real Estate Financier) deems it appropriate to fix the monthly income of the deceased at Rs.22,000/-, which would be just and reasonable. Thus, by fixing the monthly income of the deceased at Rs.22,000/-; adding 10% towards future prospects; deducting 1/3rd towards his personal expenses (since the dependents are three in numbers) and by applying right multiplier of '11' (since the deceased was aged 52 years), the compensation towards Loss of Dependency is calculated as under:-

Monthly income + 10% future prospects
(i.e. Rs.22,000/- + Rs.2,200) = Rs.24,200/-

(Deduction of 2/3 x (Multiplier of '11')
towards personal expenses)
Rs.16,133 x 12 x 2/3 x 11 = Rs.21,29,600/-

9.2 Consequently, the sum of Rs.14,52,000/- awarded by the Tribunal under the head of 'Loss of Dependency' is hereby modified and enhanced to **Rs.21,29,600/-**

9.3 Insofar as the compensation awarded by the Tribunal under all other heads are concerned, this Court finds the same to be just and proper and is hereby confirmed.

10. Thus, the total compensation payable to the appellants/claimants under various Heads is as hereunder:-

S.No	***Head***	***Amount granted***
1.	Loss of Dependency	**Rs.21,29,600/-**
2.	Loss of Estate	Rs. 15,000/-
3.	Loss of Consortium/Loss of Love and Affection (40,000/-each x3)	Rs. 1,20,000/-
4	Funeral Expenses	Rs. 15,000/-
Total		**Rs.22,79,600/-**

10.1 Consequently, the total compensation amount of **Rs.16,02,000/-** awarded by the Tribunal is hereby modified and enhanced to **Rs.22,79,600/-** which shall carry interest at the rate of **7.5 %** per annum from the date of claim petition till the date of deposit, out of which, first appellant, the wife of the deceased is entitled to a sum of **Rs.14,79,600/-** together with proportionate interest and the appellants 2 and 3, the children of the deceased is entitled to a sum of **Rs.4,00,000/-** each together with proportionate interest.

11. In the result, this Civil Miscellaneous Appeal filed by the appellants/claimants is partly allowed on the following terms:-

(i) The second respondent, Insurance Company is directed to deposit the entire amount awarded by this Court equally along with interest at the rate of 7.5 % p.a. and costs before the Tribunal within a period of six weeks from the date of receipt of a copy of this judgment, after deducting the amount already deposited, if any.

(ii) On such deposit being made by the Insurance Company, the Tribunal shall transfer the amount directly to the claimants' respective bank accounts through RTGS within a period of three weeks thereon.

(iii) The appellants/claimants are entitled to withdraw the entire award amount by making necessary application before the Tribunal.

iv) The appellants/claimants are directed to pay the court fee for the enhanced compensation, if any.

v) However, there shall be no order as to costs.

29.01.2024

To

The Chief Judge, Court of Small Causes,.
Motor Accident Claims Tribunal, Chennai

Krishnan Ramasamy,J.,

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C.M.A.No.2759 of 2023

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