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CMA.No.2688 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

CMA.No.2688 of 2022

1. Nagammal
2. Sarala
3. Lakshmi
4. Rajan

Appellants

Vs

1. Rajalakshmi
2. The United India Insurance Company Limited
Chennai-6

Respondents

Prayer:- This Civil Miscellaneous Appeal has been filed, against the judgement and decree, dated, 20.07.2011, made in MCOP.No.4867 f 2008, by the Chief Judge, Small Causes Court (MACT) Chennai.

For Appellants : Mr.P.D.Selvaraj

For Respondents : Mr.R.Rajesh-R2

JUDGEMENT

1. This Civil Miscellaneous Appeal has been filed, by the claimants, challenging the quantum of compensation, awarded by the judgement and decree, dated, 20.07.2011, made in MCOP.No.4867 f 2008, by the Chief Judge, Small Causes Court (MACT) Chennai.
2. The claimants, who are the mother, sisters and brother of the deceased M.Raghu, have filed the claim petition before the Tribunal, seeking a compensation of Rs.10,00,000/- on various heads, for the death of the



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deceased, who died in a motor road accident, which took place on 29.06.2008. The 1st Respondent herein/owner of the offending vehicle remained exparte. The claim petition was resisted, on various grounds, by the 2nd Respondent/ Insurance Company, by filing a counter. On the side of the claimants, PW.1 to PW.3 were examined and Ex.P1 to Ex.P9 were marked.

3. Finding that the accident had occurred only due to the rash and negligent driving of the driver of the offending vehicle belonged to the 1st Respondent and insured with the 2nd Respondent, the Tribunal has awarded a total compensation of Rs.3,70,000/-, on various heads, with interest at 7.5% p.a. from the date of the claim petition till the date of realization, to be paid by the 2nd Respondent Insurance Company to the 1st claimant, as detailed below:-

S.No	Category	Award Amount (Rs.)
1	Loss of Dependency	351000
2	Loss of Love and Affection	10000
3	Funeral Expenses	9000
Total Compensation		370000

The Tribunal has dismissed the claim petition, in respect of the claimants 2 to 3. Aggrieved by the quantum of compensation, this appeal has been filed by the claimants.

4. This Court heard the learned counsel for the Appellants and the 2nd Respondent Insurance Company, considered their submissions and also perused the entire materials placed on record.
5. Since there is no quarrel over the negligence aspect and the liability aspect as well and the dispute is only with regard to the quantum of compensation,



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the findings of the Tribunal with respect to the negligence aspect and liability aspect are confirmed and also it is not necessary to narrate the entire facts in detail in respect of the accident.

6. According to the learned counsel for the Appellants, at the time of the accident, the deceased was a bachelor, aged about 26 years old and the accident had occurred in the year 2008 and he was earning a sum of Rs.8,500/- p.m. as a Car Driver in a Private Firm and hence, even in the absence of evidence to prove the monthly income of the deceased, the monthly notional income arrived at Rs.4,500/- by the Tribunal appears to be on the lower side. Further, while arriving at the loss of dependency, compensation towards future prospects was not added and the multiplier of 13 adopted by the Tribunal is erroneous considering the age of the deceased, who was aged 26 years at the time of the accident. No compensation was awarded towards loss of estate. Further, the compensation awarded under the other heads are also not reasonable. Hence, the impugned compensation is to be redetermined and enhanced.

7. Per contra, the learned counsel for the 2nd Respondent, while not disputing the avocation of the deceased, would fairly submit that the notional monthly income of the deceased can be taken as Rs.6,500/- and accordingly, appropriate orders may be passed in the facts and circumstances of the case, redetermining the impugned compensation.

8. Considering the submissions of the learned counsel on either side and the materials available on record and the nature of the avocation of the



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deceased as a Car Driver, the year of the accident, i.e. 2008, considering the age of the deceased at the time of the accident, i.e. 26 years, the cost of living due to inflation rate at the relevant point of time, the notional monthly income arrived at by the Tribunal at Rs.4,500/- is not just and proper and hence, even in the absence of evidence to show the monthly income of the deceased, in the light of catena of decisions of the Honourable Supreme Court, it would be just and appropriate to fix the monthly notional income of the deceased at Rs.6,500/-. After adding 40% future prospects and deducting 50% towards personal expenses as the deceased was a bachelor, the loss of monthly dependency would come to Rs.4,550/-. Since the deceased was aged 26 years old at the time of the accident, the multiplier of 18 would be proper, instead of 13 as adopted by the Tribunal. Thus, the total compensation under the head of loss of dependency is redetermined at Rs.9,82,800/-(6500+2600)x1/2x12x18).

9. The 1st claimant being the mother of the deceased, no compensation was awarded towards loss of consortium by the Tribunal and it would be just and proper to award a sum of Rs.40,000/- towards loss of consortium to the 1st claimant. For the claimants 2 to 4, who are sisters and brother of the deceased, a sum of Rs.10,000/- each (Totally Rs.30,000/-) is hereby awarded towards loss of love and affection.

10. The Tribunal also erred in not awarding compensation towards loss of estate, since it is a case of fatal. Hence, a sum of Rs.15,000/- is hereby awarded towards loss of estate. The compensation amount of Rs.9,000/-



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under the head of funeral expenses is enhanced to Rs.15,000/-. In addition to the above, a further sum of Rs.10,000/- is hereby awarded towards transportation expenses. In all, the total compensation is redetermined at Rs.10,92,800/-, which shall carry interest 7.5% p.a. from the date of the claim petition till the date of realisation.

11. In fine, this Civil Miscellaneous Appeal is partly allowed. In all, the total compensation is arrived at Rs.10,92,800/-, (Rupees ten lakhs ninety two thousand eight hundred only) with interest 7.5% p.a. from the date of the claim petition till the date of realisation, as redetermined below:-

S.No	Category	Award Amount (Rs.)
1	Loss of Dependency(6500+45%)x50/100x12x18	982800
2	Loss of Consortium (1 st claimant)	40000
3	Loss of Love and Affection (claimants 2 to 4)	30000
4	Funeral Expenses	15000
5	Loss of Estate	15000
6	Transportation Expenses	10000
Total Compensation		1092800

Out of the total compensation, the claimants 1 to 4 are entitled to a sum of Rs., 9,42,800/-, Rs.50,000/-, Rs.50,000/- and Rs.50,000/- respectively, with proportionate interest. The claimants shall pay proper court fee for the enhanced compensation amount. In all other aspects, the impugned judgement and decree shall stand confirmed. The 2nd Respondent / Insurance Company is directed to deposit the entire award amount with interest at 7.5% p.a. from the date of the claim petition till the date of deposit, after deducting the amount, if any already, deposited and also the interest for the delay in filing the appeal if any for the enhanced compensation, within a



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period of six weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer, by way of RTGS, the respective compensation amounts with proportionate interest directly to the respective bank accounts of the claimants, within a period of three weeks thereafter. No costs.

19.02.2024

Index:Yes/No

Web:Yes/No

Speaking/Non Speaking

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To

1. The Chief Judge, Small Causes Court (MACT) Chennai
2. The Record Keeper, VR Section, High Court, Madras

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