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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2024

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CMA No.2023 of 2023

1.Selvi
2.L.Revathy
3.L.Deepa
4.L.Suganya
5.Saravanan .. Appellants

.Vs.

1.V.Bharath Kumar

2.The New India Assurance Co., Ltd.,
No.232, NSC Bose Road
LIC Building, 6th Floor
Chennai 6001 001. .. Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to enhance the compensation amount awarded by the Tribunal in M.C.O.P.No.1851 of 2021, dated 28.03.2023, on the file of the Motor Accident Claims Tribunal, Chief Small Causes Court, Chennai.

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For Appellants : Mr.Mr.N.S.Suganthan
for Mr.V.Tamilamudhu

For Respondents : Mr.P.Sankaranarayanan
for R2

JUDGMENT

The claimants who are the wife, three children and son of the deceased Lakshmanan not being satisfied with the quantum of compensation fixed by the Tribunal in MCOP No.1851 of 2021, dated 28.03.2023, have filed the present appeal seeking for enhancement of compensation.

2.The case of the claimants is that the deceased Lakshmanan was riding a two wheeler on 25.02.2021 from Tindivanam to Chennai and at about 12.00 hours, in the scene of occurrence, the offending vehicle was driven in a rash and negligent manner and it rammed the two wheeler from behind and as a result, the deceased was thrown out of the vehicle and he sustained fatal injuries and he died on 12.03.2021. It is under these circumstances, the claim petition came to be filed before the Tribunal seeking for payment of compensation.

3.The Tribunal on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, came to a conclusion that the

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accident had taken placed only due to the rash and negligent driving on the part of the offending vehicle. Having rendered such a finding, the Tribunal took into consideration the fact that the deceased was not wearing head gear and therefore 10% was attributed as contributory negligence and 90% negligence alone was fastened against the insurance company. The Tribunal thereafter, proceeded to fix the total compensation at Rs.12,85,416/ under various heads as follows:

Towards Loss of Income/Dependency Rs.16,500/- * 12 * 5 *1/2	Rs.4,95,000/-
Towards Loss of Estate	Rs. 15,000/-
Towards Loss of Consortium Rs.40000/- (each) * 4	Rs.2,00,000/-
Towards Funeral Expenses	Rs. 15,000/-
Towards Medical Bills	Rs.7,03,240/-
Towards Compensation Less 10% for non-wearing of helmet	Rs.14,28,240/- Rs. 1,42,824/-
Compensation Payable	**Rs.12,85,416/-**

4.The above compensation was directed to be paid with interest at the rate of 7.5% p.a.

5.The claimants not being satisfied with the quantum of compensation fixed by the Tribunal and attributing 10% contributory negligence against the deceased, have filed the present appeal before this Court.

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6.Heard Mr.N.S.Suganthan, learned counsel for the appellants and Mr.P.Sankaranarayanan, learned counsel for R2 – Insurance Company.

7.This Court has carefully considered the submissions made on either side and the materials available on record. This Court has also carefully gone through the award passed by the Tribunal.

8.The first issue that was raised by the learned counsel for the appellants is with regard to the fixation of the monthly income of the deceased while calculating the compensation under the head 'loss of income'/dependency'. The learned counsel submitted that the Tribunal had taken into consideration only Ex.P.25 and fixed a sum of Rs.16,500/- p.m., and the Tribunal ought to have fixed some amount towards the allowance received by the deceased.

9.The Tribunal has considered this issue and on appreciation of the evidence of PW.2 and after considering Ex.P.24 and Ex.P.25, the Tribunal has fixed the monthly income at Rs.16,500/-. There was no evidence available to add any allowance with the income. Therefore, there is no scope to increase the monthly income fixed by the Tribunal.

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10.The next issue is with regard to the contributory negligence that was attributed against the deceased. The evidence on record shows that the offending vehicle was driven in a rash and negligent manner and it had hit the two wheeler from behind. The entire negligence was attributable only to the driver of the offending vehicle. Therefore, just because the deceased did not wear a helmet, contributory negligence cannot be attributed against him. Hence, the finding of the Tribunal by attributing 10% contributory negligence against the deceased is hereby set aside.

11.The next issue pertains to the deduction made towards the personal expenditure of the deceased. Admittedly, there are five dependents for the deceased and they are wife, three children and one son. The Tribunal has deducted 1/2 towards the personal expenditure of the deceased. The said finding of the Tribunal is unsustainable and the Tribunal ought to have deduced 1/4 towards the personal expenditure of the deceased.

12.In view of the above, the compensation under the head 'loss of dependency' is calculated as follows:

16,500 * 12 * 5 (less $1/4^{th}$) = 742,500/-

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13.In the light of the above discussion, the compensation fixed by the Tribunal is modified as follows:

Towards Loss of Income/Dependency Rs.16,500/- * 12 * 5 (less ¼)	Rs.7,42,500/-
Towards Loss of Estate	Rs. 15,000/-
Towards Loss of Consortium Rs.40000/- (each) * 5	Rs.2,00,000/-
Towards Funeral Expenses	Rs. 15,000/-
Towards Medical Bills	Rs.7,03,240/-
Total	**Rs.16,75,740/-**

14.The compensation awarded by the Tribunal at **Rs.12,85,416/-** is enhanced to Rs.16,75,740/-. The 2nd respondent - Insurance Company is directed to deposit the enhanced compensation, less the amount already deposited, together with interest @ 7.5% p.a., from the date of claim petition till the date of deposit within a period of six weeks from the date of receipt of this judgment. On such deposit, the appellants/claimants will be entitled to withdraw the entire compensation with interest. Insofar as the enhanced compensation is concerned, the deficit court fee, if not paid, shall be paid by the appellants/claimants. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered.

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In the result, this civil miscellaneous appeal is partly allowed. No costs.

03.07.2024

Index : Yes/No
Speaking Order/Non-Speaking Order
Neutral citation : Yes/No
KP

To

1.Motor Accident Claims Tribunal
Chief Small Causes Court
Chennai.

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N. ANAND VENKATESH., J

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