IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.11.2024

CORAM

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

CMA.No.2967 of 2024

1. Sathiyammal
2. Minor Mohitha
3. Minor Manojkumar
   Minors are rep. by their Next friend/Mother Sathiyammal
4. Iyyammal
5. Sivalingam ...Appellants

Vs.

1. Sudevu
2. Muthusamy
3. M/s. National Insurance Company Limited,
   Rep. by its Divisional Office – I,
   L.R.N. Complex, Salem. ...Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, challenging the judgment and decree dated 05.12.2023 made in MCOP.No.1175 of 2022 on the file of the MCOP Tribunal, Special District Court, Salem.

For Appellants : Ms.L.Manisha

For Respondents : Mr.J.Chandran, for R3
: Notice dispensed with, for R1 & R2

JUDGMENT

Challenging the judgment and decree dated 05.12.2023 made in MCOP.No.1175 of 2022 on the file of the MCOP Tribunal, Special District Court, Salem, the claimants have come up with this appeal.

2. Mr.J.Chandran, learned counsel takes notice on behalf of the 3rd respondent. In view of the consent expressed by the learned counsel on either side, this appeal is taken up for final disposal at the admission stage itself.

3. It is the case of the claimants that, on 01.03.2022 at about 1.10 pm., when the deceased Sekar was riding a two wheeler bearing Regn.No.TN-37-DA-9078 on Salem-Covai main road, at that time, as the mini lorry bearing Reg.No.TN-75-A-1152 owned by the 2nd respondent insured with the 3rd respondent, was parked in the main road by the 1st

respondent, driver of the said mini lorry, without sufficient warning, the deceased was unable to identify the parked lorry, and thereby, the deceased dashed the said lorry and due to which, he sustained grievous injuries and succumbed to the same. Thereby, the appellants, who are the dependents of the deceased filed a claim petition in MCOP.No.1175 of 2022 claiming a compensation of Rs.50,00,000/-. Before the Tribunal, the claimants examined three witnesses viz. P.W.1 to P.W.3 and marked exhibits P.1 to P.15 and Ex.X.1 to X.5 and on the side of respondents, they examined three witnesses viz. R.W.1 to R.W.3 and marked exhibits R.1 & R.2 and Ex.X.6 & X.7. After trial, though the Tribunal, on appreciation of oral and documentary evidence came to a conclusion that the accident had taken place solely due to the negligence on the part of the 1st respondent, however, awarded a meagre amount of Rs.16,25,000/- towards compensation for the death of the deceased Sekar. Being not satisfied with the quantum of compensation awarded by the Tribunal, the appellants/claimants have come up with this appeal seeking enhancement of compensation.

4. Learned counsel for the appellants submitted that the above said accident happened solely due to the negligence on the part of the 1st respondent, since he parked the Mini lorry in the main road, without any signal or proper warning and the accident is of the year 2022 and at the time of accident, the deceased was only aged about 32 years and was working as a Mason and was earning a sum of Rs.30,000/- per month, however, the tribunal had taken the notional income of the deceased as Rs.10,000/-, which is very meagre and the same is contrary to the ratio laid down by the Hon'ble Apex court in catena of decisions and thereby, the same has to be increased to Rs.20,000/-. Further, the compensation awarded under other heads are also on the lower side and the same needs to be enhanced. Accordingly, he prayed for appropriate orders.

5. Per contra, the learned counsel appearing on behalf of the 3rd respondent-Insurance Company contended that, by considering all the relevant documents, the Tribunal has rightly awarded the compensation, which does not require any enhancement. Accordingly, he prays for dismissal of the appeal.

6. This Court has carefully considered the submissions made by the learned counsel on either side and perused the materials available on record.

7. The factum and manner of the accident is not disputed by the parties and therefore, this Court is not venturing into the same.

8. Insofar as the quantum of compensation fixed by the tribunal is concerned, the accident is of the year 2022 and at the time of accident, the deceased was aged about 32 years and he was a Mason by profession and the Tribunal has fixed the notional monthly income at Rs.10,000/-, which is on the lower side. Applying the ratio laid down by the Hon'ble Supreme Court in the case of ***Syed Sadiq Vs. United India Insurance Company*** reported in ***2014 (1) TANMAC 459,*** and also considering the age of the deceased as also the claimants, fixing a notional income of Rs.16,000/- and adding future prospects at 40%, as has been held by the Constitution Bench in the case of ***National Insurance Company Limited Vs. Pranay sethi and others*** reported in ***2017 (16) Supreme Court Cases***

680, the income per month is quantified at Rs.22,400/-. Deducting 1/4th towards the personal expenses of the deceased, the loss of income to the family is arrived at Rs.16,800/- per month and the deceased being aged about 32 years, as evidenced from the records, adopting the multiplier of 16 as fixed by the Apex Court in the case of ***Sarla Verma and Ors. v. DTC & Ors.*** reported in ***(2009) 6 SCC 121***, the loss of income to the family is arrived at Rs.16,800/- * 12 * 16 = Rs.32,25,600/-.

9. Insofar as the compensation awarded under the other heads are concerned, a sum of Rs.1,00,000/- has been awarded under the head Loss of Love and affection, which is on the lower side and thereby, the same is enhanced to Rs.1,60,000/- (40,000/- * 4 = 1,60,000/-) and no compensation has been awarded under the head Loss of estate and thereby, a sum of Rs.20,000/- is awarded under the said head. Further, a sum of Rs.25,000/- is awarded under the head Funeral Expenses, which is on the higher side and thereby, the same is reduced to Rs.20,000/-. Further, it is evident from Medical bills, Ex.P.15 that, a sum of Rs.26,445/- has been spent towards medical expenses of the deceased, however, the tribunal without assigning any reason, has reduced the same

to Rs.20,000/-, which is not sustainable, hence, the same is enhanced to Rs.26,500/-.

10. In the above circumstances, the compensation awarded by the Tribunal is modified as under :-

Heads	***Amount awarded by the Tribunal (Rs.)***	***Modified Award Amount (Rs.)***
Loss of income	14,40,000/-	**32,25,600/-**
Loss of love and affection	1,00,000/-	**1,60,000/-**
Loss of consortium	40,000/-	40,000/-
Funeral Expenses	25,000/-	**20,000**/-
Loss of estate	-	**20,000/-**
Medical bills	20,000/-	**26,500/-**
Total	**16,25,000/-**	**34,92,100/-**

11. Accordingly, this Civil Miscellaneous Appeal stands allowed in part and the impugned award passed by the Tribunal in MCOP.No.1175 of 2022 is modified by enhancing the compensation amount from Rs.**16,25,000/-** to **Rs.34,92,100/-**. The 3rd respondent Insurance is directed to deposit the said amount to the credit of MCOP.No.1175 of

2022 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of four (4) weeks from the date of receipt of a copy of this judgment. The 1st appellant is entitled to get the award amount Rs.10,92,100/- and the 2nd and 3rd appellants are entitled to a sum of Rs.8,00,000/- each and the 4th and 5th appellants are entitled to a compensation of Rs.4,00,000/- each, with proportionate interest and costs. On such deposit being made, the Tribunal is directed to transfer the compensation amount apportioned in respect of the major claimants/appellants 1, 4 & 5 directly to the bank account of the major appellants through RTGS within a period of two (2) weeks thereafter, upon production of proof with regard to payment of Court fee on the enhanced compensation. Insofar as the apportionment of compensation in favour of the minor claimants/2nd and 3rd appellants is concerned, the Tribunal is directed to invest the same in an interest bearing fixed deposit initially for a period of three years to be renewed till they attain majority and the quarterly interest accrued thereon shall be paid to the 1st appellant/mother of the minor appellants for being used for the welfare of the minors by the guardian. It is underscored that the appellants are not entitled to any interest for the default period, if any. No costs.

14.11.2024

skt

NCC : Yes/No
Index : Yes/No
Speaking Order : Yes/No

To:

1. The MCOP Tribunal, Special District Court, Salem.

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

M.DHANDAPANI, J.

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