IN THE HIGH COURT OF JUDICATUE AT MADRAS

DATED: 11.07.2024

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THE HONOURABLE **MR. JUSTICE ABDUL QUDDHOSE**

C.M.A.No.623 of 2020

1.P.Alamelu
2.J.Selvam @ Selvarani
3.P.Venkatachalam
4.P.Angamuthu .. Appellants

Vs

1.R.Mohammed Ismail

2.Reliance General Insurance Co. Ltd.,
Haddows Road,
Nungambakkam,
Chennai – 6. .. Respondents

Prayer: This Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 30.10.2014 passed in M.C.O.P.No.71 of 2011, on the file of the Motor Accident Claims Tribunal, Sub-Court, Attur.

For Appellants : Ms.Ramya V.Rao

For R2 : Ms.Bhuvanasundari

R1 - exparte

JUDGMENT

This appeal has been filed by the claimants/appellants seeking for enhancement of compensation.

2. The appellants are the dependents of the deceased K.Palanimuthu, who died as a result of an accident caused by a vehicle insured with the second respondent Insurance Company. The Tribunal, under the impugned award, directed the second respondent Insurance Company to pay the claimants a compensation of Rs.4,85,569/- for the death of K.Palanimuthu, as detailed hereunder:-

Transport expenses	- Rs.5,000/-
Loss of amenities	- Rs.9,569/-
Loss of consortium to wife	- Rs.25,000/-
Loss of love and affection	- Rs.40,000/-
Funeral expenses	- Rs.10,000/-
Loss of income & Loss of estate	– Rs.3,96,000/-
Total	**- Rs.4,85,569/-**

3. In the claim petition filed by the claimants, they had pleaded that the deceased was a Brick Kiln owner and was earning a sum of Rs.20,000/- per month. The accident happened on 09.06.2011. The deceased was aged about 55 years at the time of the accident. The

claimants had filed documents, which were marked as Exs.A10, A11 and A12, to establish that the deceased was a Brick Kiln owner. Exs.A10, A11 and A12 pertain to permission granted by the statutory authorities to the deceased K.Palanimuthu to carry on brick manufacturing.

4. The Tribunal, under the impugned award, has fixed notional monthly income of the deceased at Rs.4,500/- for an accident which happened in the year 2011. Having produced documents, which have been marked as Exs.A10, A11 and A12 to establish that the deceased was a Brick Kiln owner and that too when the accident is of the year 2011, this Court is of the considered view that the fixation of the notional monthly income of the deceased at Rs.4,500/- is too low. No contra evidence has also been produced by the second respondent Insurance Company to disprove the contention of the claimants that the deceased was a Brick Kiln owner at the time of the accident. Taking into consideration the documents filed by the claimants to establish that the deceased was a Brick Kiln owner as well as the year of the accident, this Court enhances the notional monthly income of the deceased from Rs.4,500/- to Rs.9,000/-.

5. The Tribunal has adopted correct multiplier of 11, since the

deceased was aged about 55 years at the time of the accident. However, the Tribunal has committed an error in deducting 1/3rd towards personal expenses of the deceased, despite the fact that the claimants, who are the dependents of the deceased, are 4 in number, for which, the correct deduction to be applied is 1/4th.

6. The Tribunal has also failed to award any compensation towards loss of future prospects. After giving due consideration to the age of the deceased, this Court fixes loss of future prospects at 10% as per the settled law. Since the notional monthly income of the deceased is enhanced to Rs.9,000/- by this Court and deducted 1/4th towards personal expenses, instead of 1/3rd erroneously deducted by the Tribunal, loss of dependency is re-assessed by this Court in the following manner:-

Monthly income	-- Rs.9,000/-
10% of future prospects	-- Rs.900/-
Total	-- Rs.9,900/-
(-) 1/4th towards personal expenses	-- Rs.2,475/-
Loss of earning capacity	
= 7425 x 12 x 11	-- Rs.9,80,100/-

7. The Tribunal has also erroneously granted lesser compensation towards loss of consortium to the wife of the deceased. The same will

have to be enhanced from Rs.25,000/- to Rs.40,000/- as per the settled law. Since the deceased has left behind three children, each of the three children are entitled to Rs.40,000/- towards loss of love and affection, which amounts to Rs.1,20,000/-. But, the Tribunal has awarded a meagre compensation of Rs.40,000/-. Accordingly, this Court enhances compensation towards loss of love affection from Rs.40,000/- to Rs.1,20,000/-.

8. Insofar as the compensation awarded by the Tribunal towards Transport expenses at Rs.5,000/- and damage to article at Rs.9,569/- is concerned, the same is a just compensation, which does not call for any interference by this Court. However, the Tribunal has failed to award any compensation towards loss of estate, which the claimants are legally entitled to as per the settled law. The error committed by the Tribunal is rectified by awarding a compensation of Rs.15,000/- towards loss of estate. The sum of Rs.10,000/- awarded by the Tribunal towards funeral expenses is also low and the same is enhanced to Rs.15,000/-.

9. For the foregoing reasons, the award passed by the Tribunal is re-worked in the following manner:-

Loss of dependency	- Rs.9,80,100/-
Transport expenses	- Rs.5,000/-
Damage to article	- Rs.9,569/-
Loss of consortium to wife	- Rs.40,000/-
Loss of love and affection	- Rs.1,20,000/-
Funeral expenses	- Rs.15,000/-
Loss of estate	- Rs.15,000/-
Total	**- Rs.11,84,669/-**
Rounded off to	**- Rs.11,84,700/-**

10. In the result, the Civil Miscellaneous Appeal is partly allowed and the impugned award passed by the Tribunal in M.C.O.P.No.71 of 2011, dated 30.10.2014, is modified by directing the second respondent Insurance Company to deposit the entire award amount of Rs.11,84,700/- together with interest at 7.5% per annum from the date of claim petition till the date of realization, to the credit of M.C.O.P.No.71 of 2011 on the file of Motor Accident Claims Tribunal, Sub-Court, Attur, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. The second respondent Insurance Company is directed to not deposit interest for the default period as observed by this Court vide its order dated 03.02.2020. On such deposit being made, the Tribunal is directed to transfer the entire

award amount as ordered in this judgment along with accrued interest therein through RTGS/NEFT transfer to the bank account of the claimants as apportioned by the Tribunal. No Costs.

11.07.2024

Index: yes/no
Neutral citation: yes/no
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To

Motor Accident Claims Tribunal,

Sub-Court,

Attur.

ABDUL QUDDHOSE,J.

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