IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.11.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2338 of 2018

1.Pavaimalar

2.Minor.Udhayabanu
(Minor represented by her mother/
next friend Pavaimalar) .. Appellants/Petitioners

Vs.

1.A.T.Vasantha

2.The United India Insurance Company Limited,
No.38, Anna Salai, III Floor,
Chennai - 600 002.
(No relief sought against the 1st respondent
Hence, notice may be dispensed with).

.. Respondents / Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 03.02.2018 made in M.C.O.P.No.355 of 2004 on the file of the Motor Accidents Claims Tribunal / III Additional District Court, Poonamallee, Thiruvallur District.

For Appellants : Mr.C.Prabakaran
For R1 : Exparte
For R2 : Mr.D.Baskar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 03.02.2018 made in M.C.O.P.No.355 of 2004 on the file of the Motor Accidents Claims Tribunal / III Additional District Court, Poonamallee, Thiruvallur District.

2.By consent of both the parties, this Civil Miscellaneous Appeal is taken up for final disposal at the admission stage itself.

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3.The appellants are the claimants in M.C.O.P.No.355 of 2004 on the file of the Motor Accidents Claims Tribunal / III Additional District Court, Poonamallee, Thiruvallur District. They filed the above claim petition claiming a sum of Rs.8,50,000/- (subsequently, the claim amount has been enhanced to Rs.11,50,000/- vide order of this Court dated 28.09.2018 made in C.M.P.No.16657 of 2018 in C.M.A.SR.No.53658 of 2018) as compensation for the death of one V.Anand Sampathkumar @ Kumar, who died in the accident that took place on 03.07.2004.

4.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving by the driver of the tanker lorry belonging to the first respondent and directed the second respondent to pay a sum of Rs.9,00,000/- as compensation to the appellants.

5.Not being satisfied with the award amount granted by the Tribunal, the appellants have come out with the present appeal challenging the portion of the award, wherein the Tribunal waived interest for the default period i.e., from 04.08.2005 to 18.12.2017 and for enhancement of the compensation.

6.The learned counsel appearing for the appellants contended that M.C.O.P.No.355 of 2004 was dismissed for default on 10.01.2008 and the appellants filed an application for restoration on 02.04.2009. The second respondent has also made an endorsement that the application for restoration may be allowed subject to waiver of interest from the date of dismissal to the filing of restoration application i.e., from 10.01.2008 to 02.04.2009. The application was numbered and adjourned periodically. Thereafter, due to administrative reason, the said M.C.O.P. was transferred to II Additional District Court, Poonamallee and the same was not taken on file by the transferee Court immediately. Only on the memo filed by the appellants, the bundle was traced and the application filed by the appellants for restoration was allowed on 18.12.2017. The appellants cannot be penalised on the fault of the Registry of the Court. He further contended that the Tribunal did not grant any enhancement for future prospects and the amount awarded towards loss of love and affection is meager and prayed for enhancement of compensation.

7.Per contra, the learned counsel appearing for the second respondent/Insurance Company contended that there are only two dependants. But the Tribunal deducted 1/4th instead of 1/3rd towards loss of income and amount awarded for loss of love and affection is excessive and hence, he prayed for setting aside the amount granted towards loss of love and affection.

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8.Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the second respondent and perused the materials available on record.

9. As far as the contention of the learned counsel for the appellants that the Tribunal erred in waiving interest from 04.08.2005 to 18.12.2017 is concerned, the M.C.O.P. was dismissed for default on 10.01.2008 and the appellants filed the application for restoration on 02.04.2009. The learned counsel for the second respondent has made an endorsement that the said restoration application may be allowed on condition to waive the interest for the default period. In spite of application being taken in the year 2009 itself, the same was ordered only on 18.12.2017, even though the second respondent had no objection subject to waiver of interest. The learned counsel for the second respondent did not dispute the dates mentioned by the appellants. In view of the same, this Court is of the view that the Tribunal erred in waiving the interest from 04.08.2005 to 18.12.2017 as rightly contended by the learned counsel for the appellants. The Tribunal ought to have waived the interest only from 10.01.2008 to 02.04.2009.

10.As far as the quantum of compensation is concerned, the learned counsel for the appellants contended that the appellants are entitled to 50% enhancement towards future prospects. The deceased was aged 33 years at the time of accident and was working in a private concern. As per the judgment of the Hon'ble Apex Court in National Insurance Company v. Pranay Sethi reported in 2017(2)TNMAC 609 (SC), the appellants are entitled to only 40% towards future prospects. The two claimants have filed claim petition and the Tribunal ought to have deducted 1/3 from the income of the deceased towards personal expenses and erred in deducting 1/4. In the result, the amount for loss of income is modified as follows:

Rs.5,000/- + 2,000/- (40% of Rs.5,000/-) X 12 X 16 X 2/3
= Rs.8,96,000/-

11.As far as the contention of the learned counsel for the appellants that the Tribunal awarded a sum of Rs.40,000/- towards loss of love and affection is meager is concerned, from the award of the Tribunal, it is seen that the Tribunal has awarded a sum of Rs.1,00,000/- towards loss of love and affection in addition to Rs.40,000/- towards loss of consortium. Therefore, the appellants are not entitled to any enhancement in these heads. The amounts awarded by the Tribunal in all other heads are fair and reasonable and the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

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S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of income	7,20,000	8,96,000	enhanced
2.	Loss of love and affection	1,00,000	1,00,000	confirmed
3.	Loss of estate	15,000	15,000	confirmed
4.	Transportation	10,000	10,000	confirmed
5.	Funeral expenses	15,000	15,000	confirmed
6	Loss of consortium	40,000	40,000	confirmed
	Total	9,00,000	10,76,000	Enhanced by Rs.1,76,000/-

12.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.9,00,000/- is hereby enhanced to Rs.10,76,000/- with interest at the rate of 7.5% (deducting the interest from 10.01.2008 to 02.04.2009) per annum from the date of petition till the date of realisation. The second respondent/Insurance Company is directed to deposit the enhanced award amount with interest now determined by this Court, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this order. The first appellant being the wife of the deceased is entitled to a sum of Rs.6,00,000/-. The second appellant being the daughter of the deceased is entitled to a sum of Rs.4,76,000/-. The first appellant/first claimant is permitted to withdraw her share with accrued interest, after adjusting the amount, if any, already withdrawn. The share amount of the minor/second appellant is ordered to be deposited in any one of the nationalised bank until she attains majority. The first claimant/first appellant/mother is permitted to withdraw the accrued interest once in three months. No costs.

Sd/-
Assistant Registrar

//True Copy//

krk/kj

Sub Assistant Registrar

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To

1.The Motor Accident Claims Tribunal
III Additional District Court
Poonamallee, Tiruvallur District.

2.The Record Keeper
V.R.Section, High Court, Madras. (2 copies)

+1 cc to M/s.C.Prabakaran, Advocate, SR No.77314

+1 cc to Mr.D.Bhaskaran, Advocate, SR No.77552

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