

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2532 of 2018

1.Karpagam
2.Kuppusamy
3.Lakshmi

.. Appellants/Petitioner

Vs.

1.Pugazharasu
(R1 remained exparte before the Tribunal,
his presence may be dispensed)

2.The United India Insurance Co. Ltd.,
No.48, Arcot Road, Saligramam,
Chennai - 600 093.
Branch Office at Trunk Road,
Poonamallee.

.. Respondents/Respondent

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 11.10.2017 made in M.A.C.T.O.P.No.402 of 2016, on the file of the II Additional District And Sessions Judge, (Motor Accidents Claims Tribunal), Tiruvallur at Poonamallee.

For Appellants : Mr.F.Terry Chella Raja

For R2 : Mr.D.Baskaran

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 11.10.2017 made in M.A.C.T.O.P.No.402 of 2016, on the file of the II Additional District And Sessions Judge, (Motor Accidents Claims Tribunal), Poonamallee, Tiruvallur.

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

3.The appellants are the claimants in M.A.C.T.O.P.No.402 of 2016, on the file of the II Additional District And Sessions Judge, (Motor Accidents Claims Tribunal), Poonamallee, Tiruvallur. They filed the said claim petition, claiming a sum of Rs.5,00,000/- as compensation for the death of their mother G.Manichammal, who died in the accident that took place on 05.06.2016.

4.The Tribunal considering the pleadings, oral and documentary evidence, held that the 1st respondent is responsible for the accident and awarded a sum of Rs.1,75,000/- as compensation to the appellants, directing the 2nd respondent-Insurance Company to pay the same.

5.Not being satisfied with the compensation awarded by the Tribunal, the appellants have come out with the present appeal seeking enhancement of the same.

6.The learned counsel appearing for the appellants contended that the Tribunal erred in not awarding any amounts for loss of dependency. The reason given by the Tribunal for not awarding compensation for loss of dependency is erroneous. The deceased was a flower vendor and was earning a sum of Rs.300/- per day. He further submitted that the amounts awarded by the Tribunal under other heads are also meager and prayed for compensation under the head of loss of dependency and enhancement of compensation on other heads.

7.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the all appellants are aged above 40 years and are living separately and they are not the dependents of the deceased. The Tribunal considering all the materials on record in proper perspective has held that the appellants are not entitled to compensation for loss of dependency. There is no error in the said finding. The amounts awarded under the head of loss of love and affection and funeral expenses are excessive and prayed for dismissal of the appeal.

8.Heard the learned counsel for the appellants as well as 2nd respondent and perused the materials available on record.

9.From the materials on record, it is seen that the Tribunal did not award any amounts for loss of dependency on the ground that the deceased was 70 years old at the time of the accident and the appellants are living separately. This reasoning is erroneous. It is well settled that even married daughters are entitled to compensation for loss of dependency. No evidence was let in to substantiate the contention of the learned counsel for the appellants that the deceased was a flower vendor, earning a sum of Rs.300/- per day. Considering the undisputed fact that

the accident took place in the year 2016 and the deceased was a flower vendor, a sum of Rs.6,500/- is fixed as notional income of the deceased. The deceased was 70 years at the time of the accident. The multiplier applicable is 5. After deducting 1/3rd towards personal expenses of the deceased, the appellants are entitled to the following amounts towards loss of dependency:

$$\text{Rs.}6500 \times 12 \times 5 \times 2/3 = \text{Rs.}2,60,000/-$$

However, the appellants are not entitled for any future prospects.

10.The Tribunal has awarded excessive amounts for loss of love and affection and funeral expenses. In view of the excessive amounts awarded by the Tribunal, the appellants are not entitled for any further enhancement. Thus the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of Dependency	-	2,60,000/-	granted
2.	Loss of love and affection	1,50,000/-	1,50,000/-	confirmed
3.	Funeral expenses	25,000/-	25,000/-	confirmed
	Total	1,75,000/-	4,35,000/-	Enhanced by Rs.2,60,000/-

11.The 2nd respondent is directed to deposit the enhanced award amount of Rs.4,35,000/- along with interest and costs, to the credit of M.C.O.P.No.402 of 2016, on the file of the II Additional District And Sessions Judge, (Motor Accidents Claims Tribunal), Poonamallee, Tiruvallur, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the appellants/claimants are entitled to withdraw the award amount as per the ratio of apportionment fixed by the Tribunal, less the amount already withdrawn, if any, with interest and costs, by making necessary application before the Tribunal. It is made clear that the appellants shall not be entitled to any interest for the delay period in filing the appeal.

12.In the result, this Civil Miscellaneous Appeal is partly allowed, enhancing the amount awarded by the Tribunal from Rs.1,75,000/- to Rs.4,35,000/-. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

krk/gsa

To

1. The II Additional District And Sessions Judge,
(Motor Accidents Claims Tribunal),
Poonamallee, Tiruvallur.

+1cc to Mr.D.Baskaran, Advocate, S.R.No.78162

+1cc to M/s.Malar, Advocate, S.R.No.78203

CMA.No.2532 of 2018

MG(CO)
CS/22/02/2019