

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2680 of 2018

S.Lakshmi

.. Appellant/Petitioner

Vs.

1.K.Fakrudeen
(R1 set exparte)

2.ICICI Lombard General Insurance Co. Ltd.,
No.130, 3rd Floor, Nungambakkam,
High Road, Chennai 600 034. .. Respondents /Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 04.04.2018 made in M.C.O.P.No.1444 of 2014, on the file of Special Sub Court No.1, Small Causes Court, (Motor Accidents Claims Tribunal), Chennai.

For Appellant : Mr.A.Shanmugaraj

R1 : Ex parte (vide in EB)

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of amounts granted in the award dated 04.04.2018 made in M.C.O.P.No.1444 of 2014, on the file of Special Sub Court No.1, Small Causes Court, (Motor Accidents Claims Tribunal), Chennai.

2.The appellant is the claimant in M.C.O.P.No.1444 of 2014, on the file of Special Sub Court No.1, Small Causes Court, (Motor Accidents Claims Tribunal), Chennai. She filed the said claim petition, claiming a sum of Rs.15,00,000/- as compensation for the death of her son, S.Ravi, who died in an accident that took place on 19.11.2007.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident took place only due to the rash and negligent driving by the driver of the auto

bearing Registration No. TN-02-AB-6008 and directed the second respondent-Insurance Company to pay a sum of Rs.12,94,600/- as compensation to the appellant.

4. Not being satisfied with the compensation awarded by the Tribunal, the appellant has come out with this appeal, seeking enhancement.

5. The learned counsel appearing for the appellant contended that the deceased was working as an auto driver and was earning Rs.12,000/- per month. The appellant has examined one of the auto driver as P.W.3 and proved that the deceased was working as an auto driver and was earning Rs.12,000/- per month as salary. The Tribunal without properly appreciating the evidence of P.W.3, the auto driver, has erroneously fixed the notional income of the deceased at Rs.8,000/- per month, instead of Rs.12,000/- per month and prayed for enhancement of the compensation.

6. Heard the learned counsel for the appellant and perused the materials on record.

7. From the claim petition filed by the appellant, it is seen that the appellant has stated that the deceased was working as a driver under one Sivamani and was earning Rs.400/- per day. The appellant has not examined the said Sivamani to prove her contention. The appellant has examined one M.Rajesh as P.W.3 to prove the employment and income of the deceased. No document was produced by P.W.3 or the appellant to substantiate the oral evidence of P.W.3. In such circumstances, the notional income of Rs.8,000/- per month fixed by the Tribunal is not meager. The deceased was aged 23 years at the time of accident. The Tribunal, taking into account the age of the deceased, added 40% enhancement towards future prospects and applied multiplier of '18', as per the judgment of the Hon'ble Apex Court in Sarla Verma & others vs. Delhi Transport Corporation & another reported in 2009 (2) TNMAC 1 SC after deducting 50% towards his personal expenses as deceased was un-married, awarded compensation of Rs.12,09,600/- [Rs.8,000 + 3200 (40% of 8000) x 12 x 18 x ½] towards loss of income to the appellant. The amounts awarded under this head is proper and not meager. Hence, there is no perversity in the award of the Tribunal, warranting interference by this Court. The amounts awarded under different heads are just compensation.

8. In the result, this Civil Miscellaneous Appeal is dismissed and the sum of Rs.12,94,600/- awarded by the Tribunal as compensation is confirmed. The 2nd respondent-Insurance Company is directed to deposit the award amount with interest, less the amount already deposited, if any, within a period of

six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.1444 of 2014. On such deposit, the appellant/claimant is permitted to withdraw the award amount with accrued interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gsa

To

1.The Special Subordinate Judge-I,
Small Causes Court,
(Motor Accidents Claims Tribunal), Chennai.

2.The Section Officer,
VR Section,
High Court,
Madras 600 104.

+1cc to Mr.A.Shanmugaraj, Advocate sr.no.80991

CMA.No.2680 of 2018

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