

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2657 of 2018

1.Andal

2.R.Sundaramoorthy

.. Appellants /Petitioners

Vs.

1.C.Sathish John De Britto

2.United India Insurance Co. Ltd.,

Silingi Building, 4th Floor,

No.134, Greams Road,

Chennai - 600 006.

... Respondents/Respondents

(R1 set exparte before the Tribunal)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 23.07.2018 made in M.C.O.P.No.7284 of 2015 on the file of the Chief Judge, Court of Small Causes, (Motor Accidents Claims Tribunal), Chennai.

For Appellants : Mr.K.Varadha Kamaraj

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 23.07.2018 made in M.C.O.P.No.7284 of 2015 on the file of the Chief Judge, Court of Small Causes, (Motor Accidents Claims Tribunal), Chennai.

2.The appellants are the claimants who filed M.C.O.P.No.7284 of 2015 on the file of the Chief Judge, Court of Small Causes, (Motor Accidents Claims Tribunal), Chennai, claiming a sum of Rs.50,00,000/- as compensation for the death of their son viz., Neelakandan, who died in the accident that took place on 18.06.2015.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving by the first respondent and awarded a sum of Rs.15,00,000/- as compensation and directed both the

respondents to pay the compensation amount jointly and severally to the claimants.

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

5. The learned counsel appearing for the appellants contended that the deceased was working as a driver and was earning a sum of Rs.18,000/- per month. The Tribunal erred in fixing the notional income of the deceased at Rs.8,000/- per month. The Tribunal ought to have accepted the oral and documentary evidence let in by the appellants and fixed the monthly income of the deceased at Rs.18,000/- per month. As per the post-mortem report, the age of the deceased is 24 years. The Tribunal erred in fixing the age of the deceased at 35 years as per the death certificate, instead of fixing 24 years based on the post-mortem report. The Tribunal ought to have applied multiplier of '18' for the age of 24 years, instead of applying the multiplier of '16' for the age of 35 years. The amounts awarded for loss of income is meager and prayed for enhancement of compensation.

6. Heard the learned counsel appearing for the appellants and perused the materials available on record.

7. The appellants claim that the deceased was a driver and was earning a sum of Rs.18,000/- per month. The appellant failed to substantiate this claim by letting in any acceptable evidence. They have not examined any person under whom the deceased was working as a driver. In such circumstances, the Tribunal has fixed the notional income of the deceased at Rs.8,000/- per month, which is reasonable. The learned counsel appearing for the appellants contended that the Tribunal ought to have fixed the age of the deceased at 24 years and applied multiplier of '18'. From the materials on record, it is seen that the appellants are the parents of the deceased. The deceased was unmarried at the time of accident. In such circumstances, the Tribunal ought to have deducted 50% from the income of the deceased towards his personal expenses while calculating the loss of income of the appellants. The Tribunal has deducted only 1/3rd towards the personal expenses of the deceased. Even if multiplier of '18' is applied, after adding 40% towards future prospects and after deducting 50%, the loss of income will be only Rs.12,09,600. But, the Tribunal has awarded a sum of Rs.14,93,600/- towards loss of income. In view of the same, the contention of the learned counsel of the appellants that the multiplier of '18' has to be applied, is without merits. Further, the Tribunal has given valid reason for

not accepting the age of the deceased as mentioned in the post-mortem report. In view of the excess amount awarded by the Tribunal, I do not find any reason to enhance the compensation.

8. In the result, the Civil Miscellaneous Appeal is dismissed and the amount of Rs.15,00,000/- awarded by the Tribunal as compensation is confirmed. Both the respondents are 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.7284 of 2015. On such deposit, the appellants/claimants are permitted to withdraw their share, as per the ratio of apportionment fixed by the Tribunal, 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

krk/gsa

To

1. The Chief Judge,
Court of Small Causes,
(Motor Accidents Claims Tribunal), Chennai.

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

+1cc to Mr.K.Varadhakamaraj, Advocate Sr.79485

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C.M.A.No.2657 of 2018

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