

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No. 1296 of 2015

1.Arokiaselvi
2.Amulraj (died)

.. Appellants

Vs.

1.M/s. SICAL Distriparks Ltd.,
Having office at,
No. 32, Old No. 47,
2nd and 3rd Floor,
Rajaji Salai,
Chennai 1.

2.Royal Sundaram Alliance Co. Ltd.,
Having office at L.B. Road,
Adyar, Chennai 600 020.

... Respondents

(R1 remained exparte before the Tribunal)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 02.01.2014, made in M.C.O.P.No. 429 of 2014, on the file of the IV Additional District Court, (Motor Accident Claims Tribunal), Ponneri, Chennai.

For Appellants : M/s. A. Subadra
for M/s. M. Malar

For Respondents: Mr. E. Rajadurai
for M/s. M.B. Raghavan (for R2)

R1 -Exparte

J U D G M E N T

This appeal has been filed for enhancement of the compensation granted by the award dated 02.01.2014, made in M.C.O.P.No. 429 of 2014, on the file of the IV Additional District Court, (Motor Accident Claims Tribunal), Ponneri, Chennai.

2.The appellants are claimants in M.C.O.P.No. 429 of 2014, on the file of the IV Additional District Court, (Motor Accident Claims Tribunal), Ponneri, Chennai. They filed the said claim petition, claiming a sum of Rs.15,00,000/- (amended as per the order of this Court dated 09.06.2015 made in M.P. No. 1 of 2014 in C.M.A. SR. No. 44457 of 2014) as compensation for the death of one Michael, who died in the accident that took place on 24.01.2010. Pending claim petition, the 2nd appellant died.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the vehicle belonging to the 1st respondent and directed the 2nd respondent as insurer of the vehicle to pay a sum of Rs.6,00,000/- as compensation to the 1st appellant.

4.Not being satisfied with the amounts awarded by the Tribunal in the award dated 02.01.2014, made in M.C.O.P.No. 429 of 2014, the appellants have come out with the present appeal.

5.Learned counsel appearing for the appellants contended that the deceased was working as a Manager in Arul Jothy Cargo Services and was earning a sum of Rs.10,000/- per month. The Tribunal fixed a meagre sum of Rs.4,000/- per month as income of the deceased. At the time of accident, the deceased was aged 27 years. The Tribunal ought to have granted compensation towards enhancement of future prospects. The Tribunal has not awarded any amount towards transport charges and loss of estate. In any event, the amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of the compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal, in the absence of any material evidence to prove the income of the deceased, fixed a sum of Rs.4,000/- per month as notional income. The same is not erroneous. The amounts awarded by the Tribunal under different heads are not meagre. The appellants have not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

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

8.It is the contention of the appellants that the deceased worked as a Manager in Arul Jothi Cargo Services and was earning a sum of Rs.10,000/- per month. The Tribunal without considering the salary certificate, marked as Ex.P8 to substantiate the

income of the deceased, has fixed a meagre sum of Rs.4,000/- per month as notional income and granted compensation under the head of loss of dependency, stating that the appellants have not marked the salary certificate through the employer of the deceased. The said reason given by the Tribunal is not proper. The accident is of the year 2010. This Court fixes the monthly income of the deceased at Rs.8,000/-. The deceased was a bachelor aged 27 years at the time of accident. The Tribunal ought to have awarded enhancement towards future prospects. Considering the age of the deceased, the appellants are entitled to 40% enhancement towards future prospects. Applying the multiplier '17' and after deducting 1/2 towards personal expenses of the deceased, the amount awarded by the Tribunal towards loss of dependency is modified to Rs.11,42,400/- {[Rs.8,000/- + Rs.3,200/- (40% of Rs.8,000/-)] x 12 x 17 x 1/2}. The sum of Rs.15,000/- granted by the Tribunal under the head 'loss of mental agony' is erroneous and the same is set aside. The Tribunal has granted excess amount of Rs.25,000/- towards funeral expenses and Rs.50,000/- towards loss of love and affection. The same are reduced to Rs.15,000/- and Rs.40,000/- respectively. The 1st appellant is entitled to only a sum of Rs.40,000/- under the head of loss of love and affection. The Tribunal has not awarded any amount towards loss of estate and transportation charges. The 1st appellant is entitled to a sum of Rs.15,000/- each towards loss of estate and transportation charges. 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.	Funeral expenses	25,000/-	15,000/-	Reduced
2.	Loss of love and affection	50,000/-	40,000/-	Reduced
3.	Loss of dependency	5,10,000/-	11,42,400/-	Enhanced
4.	Loss of mental agony	15,000/-	-	Set aside
5.	Loss of estate	-	15,000/-	Granted
6.	Transportation charges	-	15,000/-	Granted
	Total	6,00,000/-	12,27,400/-	Enhanced by Rs.6,27,400/-

9. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.6,00,000/- is enhanced to Rs.12,27,400/- along with interest and costs. The 2nd respondent-Insurance Company is directed to deposit the enhanced award amount, now determined by this Court, along with interest and costs, 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. 429 of 2014. On such deposit, the 1st appellant/ 1st claimant is permitted to withdraw the award amount along with interest and costs, after adjusting the amount, if any, already withdrawn, by filling necessary applications before the Tribunal. The 1st appellant is directed to pay the court fee, if any, on the enhanced amount of Rs.6,27,400/-. No costs.

Sd/-
Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

gsa

To

1. The Section Officer,
V.R Section,
High Court, Madras.
2. The IV Additional District Judge,
(Motor Accident Claims Tribunal),
Ponneri,
Chennai.

+1cc to M/s. M. Malar, Advocate SR.No.106415

+1cc to M/s.M.B.Gopalan Associates, Advocate SR.No.106745

C.M.A.No. 1296 of 2015

PPA (CO)
GMY (17/08/2020)

WEB COPY