

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.03.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1401 of 2015

1.D.Selvam
2.D.Dhanapal

3.D.Devasundaram

.. Appellants/Petitioners

Vs.

1.N.Kullammal

2.Shriram General Insurance Company Limited,
II Floor, City Centre Complex,
66, Thirumala Pillai Road,
Near Vani Mahal, T.Nagar,
Chennai - 600 017.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 30.07.2014 made in M.C.O.P.No.1104 of 2013 on the file of the Motor Accident Claims Tribunal, Additional District Court, Cuddalore.

For Appellants : Mr.S.Kalyanaraman

For R2 : Mr.S.Dhakshnamoorthy

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation of the award dated 30.07.2014 made in M.C.O.P.No.1104 of 2013 on the file of the Motor Accident Claims Tribunal, Additional District Court, Cuddalore.

2.The appellants are the claimants in M.C.O.P.No.1104 of 2013 on the file of the Motor Accident Claims Tribunal, Additional District Court, Cuddalore. They filed the above said claim petition, claiming a sum of Rs.15,00,000/- as compensation for the death of one Ponmalar, who died in the accident that took place on 02.02.2013.

3.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 lorry belonging to the first respondent and directed the second respondent-Insurance Company to pay a sum of Rs.1,05,000/- as compensation to the appellants/claimants.

4. Not being satisfied with the award amount granted by the Tribunal, the appellants have come out with the present appeal.

5. The learned counsel appearing for the appellants contended that only the appellants maintained the deceased and met out the expenses for his education. The Tribunal having held that appellants are dependents of the deceased, ought to have fixed monthly income of the deceased and awarded compensation towards loss of dependency by applying multiplier method. The deceased was 25 years old and was a IIIrd year student of Diploma in Mechanical Engineering in Annai Velankanni Polytechnic, Panruti and after completion of his studies, he could have got decent job and contributed amounts to the appellants. The learned counsel for the appellants further contended that the Tribunal has not awarded any amount towards loss of estate and prayed for enhancement of compensation.

6. Per contra, the learned counsel appearing for the second respondent-Insurance Company contended that the appellants themselves have admitted that the deceased was dependent on them and Tribunal has rightly did not grant any compensation for loss of dependency. The appellants are not entitled to any compensation for loss of dependency. The appellants have not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

7. I have heard the learned counsel for the appellants as well as the second respondent and perused entire materials on record.

8. From the materials available on record, it is seen that the appellants who are the brothers of the deceased have filed claim petition claiming compensation for the death of their brother viz., Ponmalar, who died in the accident. They have produced Ex.P7/legal heirship certificate. The Tribunal considering Ex.P7, held that the appellants are dependents of the deceased. The Tribunal did not grant any compensation for loss of dependency on the ground that deceased was depending on the appellants at the time of accident. The said reason is erroneous. It is not in dispute that parents of the deceased and appellants are not alive. The appellants who are the brothers of the deceased were maintaining the deceased and meeting out all the educational expenses of the deceased. The deceased was a IIIrd year student of Diploma in Mechanical Engineering in Annai Velankanni Polytechnic, Panruti. After completion of his studies, he could have got decent job with good salary and would have contributed to the maintenance of the family. The parents of the minor deceased are granted compensation, even though the minor was a non-earning member and depends on the parents.

Applying the same principle, the appellants are entitled to compensation for loss of dependency for the death of their own brother. The accident occurred in the year 2013 and the deceased was a IIIrd year student of Diploma in Mechanical Engineering in Annai Velankanni Polytechnic, Panruti. The monthly income of the deceased is fixed at Rs.7,000/-. The deceased was aged 25 years at the time of accident and the appellants are entitled to 40% enhancement towards future prospects. The multiplier applicable is '18'. The deceased was a bachelor and 50% has to be deducted towards personal expenses of the deceased. Hence the compensation towards loss of dependency comes to Rs.10,58,400/- [Rs.7,000/- + 40% of Rs.7,000/- x 12 X 18 X ½]. The Tribunal has not granted any amount towards loss of estate and a sum of Rs.15,000/- is granted by this Court towards loss of estate. The Tribunal has granted a sum of Rs.25,000/- each to the appellants towards loss of love and affection, which is meagre and the same is hereby modified as the appellants are entitled to a sum of Rs.40,000/- each. The compensation awarded by the Tribunal towards funeral expenses and transportation is hereby confirmed. 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 love and affection	75,000/-	1,20,000/-	Enhanced
2.	Funeral expenses and transportation	30,000/-	30,000/-	Confirmed
3.	Loss of dependency	-	10,58,400/-	Granted
4.	Loss of estate	-	15,000/-	Granted
	Total	Rs.1,05,000/-	Rs.12,23,400/-	enhanced by Rs.11,18,400/-

9.It is well settled that Courts must grant just compensation even more than what is claimed by the claimants in the facts and circumstances of the case. In the present case, the just compensation comes to Rs.12,23,400/-. The appellants are directed to pay the Court fee for the enhanced award amount within a period of two weeks from the date of receipt of a copy of this judgment, failing which the appellants are not entitled for any compensation for the amount for which Court fee is not paid.

10.In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.1,05,000/- is hereby enhanced to Rs.12,23,400/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The second respondent-Insurance Company is directed to deposit the enhanced award amount now determined by this Court, along with interest and costs, 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, the appellants are permitted to withdraw their respective share of the enhanced award amount now determined by this Court, as per the ratio of apportionment fixed by the Tribunal, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. No costs.

sd/-
Assistant Registrar(insp.cell)

// True Copy//

Sub Assistant Registrar

krk

To
The Additional District Judge,
Motor Accident Claims Tribunal,
Cuddalore.

+1cc to Mr.S.Kalyanaraman, Advocate, sr. no.30242

+1cc to Mr.S.Dhakshnamoorthy, Advocate, sr. no.30406

SSV(CO)
RMP(09/07/2019)

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