



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.143 of 2015

1.Ganga Giriya

2.Mithun alias Manoj (Minor)
rep. by his mother and natural guardian
Mrs.Ganga Giriya/1st appellant

3.Muniyammal

.. Appellants/Claimant

Vs.

1.Soundara Pandian

2.Reliance General Insurance Company Limited,
Raj's Tower, Plot No.2054,
2nd Avenue, 2nd Floor,
Near to Senthil Nursing Home,
Anna Nagar, Chennai - 600 040.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 27.11.2013 made in M.C.O.P.No.137 of 2011 on the file of the Motor Accident Claims Tribunal, Chief Judge, Small Causes Court at Chennai.

For Appellants : Mr.M.Selvam

For R2 : Mrs.C.Harini
for Mr.Vijayaraghavan

J U D G M E N T

The Civil Miscellaneous Appeal is filed by the appellants/claimants seeking enhancement of compensation granted by the Tribunal in the award dated 27.11.2013 made in M.C.O.P.No.137 of 2011 on the file of the Motor Accident Claims Tribunal, Chief Judge, Small Causes Court at Chennai.



2.The appellants are claimants in M.C.O.P.No.137 of 2011 on the file of the Motor Accident Claims Tribunal, Chief Judge, Small Causes Court at Chennai. They filed the said claim petition claiming a sum of Rs.30,00,000/- as compensation for the death of one Bhaskaran, who died in the accident that took place on 31.07.2010. 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 lorry belonging to the 1st respondent and directed both the 1st respondent as well as the 2nd respondent/Insurance Company being insurer of the said lorry to pay a sum of Rs.13,28,728/- as compensation to the appellants jointly and severally. Not being satisfied with the amount awarded by the Tribunal, the appellants have come out with the present appeal seeking enhancement of compensation.

3.The learned counsel appearing for the appellants/claimants contended that the deceased was working as an ex-serviceman and was receiving a sum of Rs.8,000/- as pension. He was also working in R.R.B. Energy Ltd. as Senior Technician and was getting a monthly income of Rs.9,360/-. He was totally receiving a sum of Rs.18,000/- per month. The Tribunal erroneously fixed notional income of the deceased only at Rs.8,611/- per month. The Tribunal ought to have fixed monthly income of the deceased at Rs.18,000/- per month. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

4.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the Tribunal has considered the salary certificate of the deceased and after deducting conveyance and allowance, fixed monthly income of the deceased. The deceased was aged 43 years at the time of accident. He was working in a private concern. The appellants are entitled to only 25% enhancement towards future prospects. The Tribunal has erroneously granted 30% enhancement towards future prospects. As far as pension is concerned, the 1st appellant will get family pension and the Tribunal did not include the pension received by the deceased. The appellants have not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

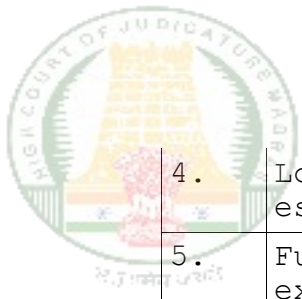
5.Heard the learned counsel appearing for the appellants as well as the 2nd respondent/Insurance Company and perused all the materials available on record.

6.From the materials available on record, it is seen that the appellants have contended that the deceased was an ex-serviceman and was receiving a sum of Rs.8,000/- per month. He



was also working as a Senior Technician in R.R.B. Energy Ltd. and was earning a sum of Rs.9,360/- per month. To prove the said contention, the 1st appellant examined herself as P.W.1 and has marked Ex.P17/salary certificate of the deceased issued by R.R.B. Energy Ltd. and Ex.P18/copy of the pension payment order. The Tribunal considering Ex.P17, has not taken into account the sum of Rs.749/- granted to the deceased as conveyance allowance, fixed monthly income of the deceased at Rs.8,611/-. The Tribunal has not taken into consideration Ex.P18/copy of the pension payment order. The Tribunal granted 30% enhancement towards future prospects. The Tribunal failed to take into account the pension received by the deceased as per Ex.P18. The appellants have failed to prove Ex.P17 by examining its author or any other employee of the R.R.B. Energy Ltd. The appellants have also not filed any bank statement to prove that the deceased received monthly pension. Considering the materials in entirety, date of accident and age of the deceased, a sum of Rs.7,000/- is fixed towards pension and Rs.6,000/- is fixed towards monthly income of the deceased. The deceased was aged 43 years at the time of accident. The appellants are entitled to only 25% enhancement towards future prospects. The amounts awarded by the Tribunal towards loss of dependency is modified to Rs.16,24,000/- (Rs.7,000/- + Rs.6,000/- + 1500 (Rs.6,000/- X 25%) X 12 X 14 X 2/3). A sum of Rs.25,000/- granted by the Tribunal towards loss of consortium to the 1st appellant is meagre and the same is enhanced to Rs.40,000/-. A sum of Rs.10,000/- each granted by the Tribunal towards loss of estate and funeral expenses are meagre and hence, the same are enhanced to Rs.15,000/- each. The amounts awarded by the Tribunal towards loss of love & affection and transportation are just and reasonable and the same are 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 dependency	12,53,728	16,24,000	Enhanced
2.	Loss of consortium to the 1 st appellant	25,000	40,000	Enhanced
3.	Loss of love and affection to the 2 & 3 appellants	25,000	25,000	Confirmed



4.	Loss of estate	10,000	15,000	Enhanced
5.	Funeral expenses	10,000	15,000	Enhanced
6.	Transportation	5,000	5,000	Confirmed
	Total	Rs.13,28,728/-	Rs.17,24,000/-	Enhanced by Rs.3,95,272/-

7. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.13,28,728/- is hereby enhanced to Rs.17,24,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellants/claimants are directed to pay necessary Court fee, if any, on the enhanced compensation. The 1st appellant being wife of the deceased is entitled to a sum of Rs.7,42,000/-, 2nd appellant being son of the deceased is entitled to a sum of Rs.5,41,000/- and the 3rd appellant being mother of the deceased is entitled to a sum of Rs.4,41,000/- as compensation. Both the 1st respondent as well as the 2nd respondent/Insurance Company are directed to deposit the enhanced award amount now determined by this Court along with interest and costs jointly and severally, 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 1 & 3 are permitted to withdraw their respective share of the award amount along with proportionate interest and costs, less the amount if any, already withdrawn. The share of the minor/2nd appellant is directed to be deposited in any one of the Nationalised Bank till the minor attains majority. The 1st appellant being mother of the 2nd appellant is permitted to withdraw the accrued interest once in three months for the welfare of the minor. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

kj



To
1. The Chief Judge,
Small Causes Court,
Motor Accidents Claims Tribunal,
Chennai.

Copy to

The Section Officer,
V.R. Section,
High Court, Madras.

+1 cc to Mr.M.Selvam Advocate sr31167
+1 cc ot M/s.M.B.Gopalan Advocate sr31776

C.M.A.No.143 of 2015

ss(co)
aa10/09/2019