

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No. 1454 of 2015

1.S.Mahalakshmi

2.N.Panchavarnam

3.N.Muthukameshwari @ Suba ... Appellants/Claimants

Vs.

1. P.Praveen Kumar

2. K.Palaniappan

3. Shriram General Insurance Company Ltd.,
rep. By its Branch Manager,
2nd Floor Rear Portion,
Nagappa Complex,
No. 1076, Mettupalayam Road,
Coimbatore 641 002.

4. Dr. R. Muralidharan

5. National Insurance Co., Ltd.,
Rep. By its Branch Manager,
Having office at 5-A,
Sub Collector's Office Road,
Opposite to District Court Buildings,
Dindigul 624 001. ... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 17.12.2014, made in M.C.O.P.No.21 of 2013, on the file of the Special District Court, (Motor Accident Claims Tribunal), Erode.

For Appellants : Mr. P. Parthikannan
for M/s. S. Kaithamalai Kumaran

For Respondents: No appearance (For R1 & R2)
Mr. S. Dhakshnamoorthy (For R3)
Mr. S. Vadivel (For R5)

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of the compensation granted by the award dated 17.12.2014, made in M.C.O.P.No.21 of 2013, on the file of the Special District Court, (Motor Accident Claims Tribunal), Erode.

2.The appellants/claimants filed M.C.O.P.No.21 of 2013, on the file of the Special District Court, (Motor Accident Claims Tribunal), Erode, claiming a sum of Rs.20,00,000/- as compensation for the death of one N. Senthilkumar, who died in the accident that took place on 04.07.2012.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the 1st respondent, driver of the van belonging to the 2nd respondent, insured with the 3rd respondent and dismissed the claim petition as against the 4th and 5th respondents and directed the 3rd respondent-Insurance Company to pay a sum of Rs.7,62,440/- as compensation to the appellants.

4.Not being satisfied with the amounts awarded by the Tribunal in the award dated 17.12.2014, made in M.C.O.P. No.21 of 2013, the appellants have come out with the present appeal.

5.Learned counsel appearing for the appellants contended that the deceased was working as an Ambulance Driver attached with the 4th respondent and was earning a sum of Rs.14,000/- per month. The Tribunal without assigning any valid reasons and without accepting the evidence of P.W.2-Administrative Officer of Citi Hospital, Dindigul, who issued the salary certificate marked as Ex.P10, erroneously fixed the monthly income of the deceased at Rs.5,000/-. The amounts awarded by the Tribunal towards loss of consortium is very meagre. The Tribunal has not awarded any amount towards loss of love and affection to the appellants 2 and 3, funeral expenses and transport expenses. In any event, the total compensation awarded by the Tribunal is meagre and prayed for enhancement of the same.

6.Per contra, learned counsel appearing for the 3rd respondent-Insurance Company contended that the Tribunal, in the absence of any material evidence to prove the deposition of P.W.1 regarding monthly income and age of the deceased, has rightly fixed a sum of Rs.5,000/- per month as the notional income, granted 30% enhancement towards future prospects and awarded compensation towards loss of income, which is not meagre. The appellants have not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

7.Learned counsel appearing for the 5th respondent contended that the Tribunal has directed only the 3rd respondent-Insurance Company to pay the compensation to the appellants and hence, the 5th respondent is not necessary party and prayed for dismissal of the appeal.

8.Heard learned counsel appearing for the appellants, learned counsel appearing for the 3rd respondent as well as the 5th respondent and perused the materials available on record.

9.It is the contention of the appellants that at the time of accident, the deceased was working as Ambulance Driver under the 4th respondent and was earning a sum of Rs.14,000/- per month. From the materials on record, it is seen that the appellants have marked the salary certificate issued by the 4th respondent, as Ex.P10. The Tribunal, without considering Ex.P10, erroneously fixed a meagre sum of Rs.5,000/- per month as notional income of the deceased. Considering the evidence of P.W.1 and Ex.P10, the monthly income of the deceased is fixed at Rs.10,000/-. The Tribunal fixed the age of the deceased as 43 years. The appellants are entitled to only 25% enhancement towards future prospects. Hence, awarding 25% enhancement towards future prospects, applying the multiplier '14' and after deducting 1/3rd towards personal expenses of the deceased, the amounts awarded by the Tribunal towards loss of income is modified to Rs. 15,75,000/- {[Rs.10,000/- + Rs.2,500/- (25% of Rs.10,000/-)] x 12 x 14 x 3/4}. The amounts awarded by the Tribunal towards loss of consortium to the 1st appellant is meagre. Having lost her husband at the young age, the 1st appellant is entitled to a sum of Rs.40,000/- towards loss of consortium. The Tribunal has not awarded any amount towards loss of estate. Hence, a sum of Rs.15,000/- is awarded under the said head. The Tribunal has awarded excess amount of Rs.10,000/- towards loss of amenities. Hence, the same is set aside. The amounts awarded by the Tribunal under other heads 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 income	7,27,440/-	15,75,000/-	Enhanced
2.	Loss of consortium	10,000/-	40,000/-	Enhanced

3.	Funeral expenses	10,000/-	10,000/-	Confirmed
4.	Loss of amenities	10,000/-	-	Set aside
5.	Transportation	5,000/-	5,000/-	Confirmed
6.	Loss of estate	-	15,000/-	Granted
	Total	7,62,440/-	16,45,000/-	Enhanced by Rs.8,82,560/-

10. In the result, the appeal is partly allowed and amount awarded by the Tribunal at Rs.7,62,440/- is enhanced to Rs.16,45,000/- along with interest and costs. The 3rd 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.21 of 2013. On such deposit, the appellants / claimants are permitted to withdraw their share of the enhanced award amount along with proportionate interest and costs, less the amount already withdrawn if any, by filing necessary application before the Tribunal. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

gsa

To

1. The Special District Judge,
(Motor Accident Claims Tribunal),
Erode.

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

+1 CC to Mr.S. Dhakshnamoorthy, Advocate sr 103240.
+1 CC to Mr.S.Vadivel, Advocate sr 103212
+1 Cc to Mr.S.Kaithamalai Kumaran, Advocate sr 103201.

C.M.A.No. 1454 of 2015

SR(CO)
SP(20/07/2020)