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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1703 of 2015

1.Chinnusamy

2.Palaniyammal

.. Appellants

Vs.

1.Khetmalji

2.United India Insurance Company Limited,
Branch Office-II, Oriental Complex,
Arunachalaasari Street, Salem-1.

3.The Managing Director, Tamil Nadu State
Transport Corporation (Madurai) Ltd,
Madurai Division, Dindugal Region,
Bye Pass Road, Dindugal Post and District.

4.Muthuramalingam

.. Respondents

(Notice to R1, R3 and R4 may be dispensed with
for the time being since R1 & R4 set exparte before the
Tribunal and the claim has been dismissed against R3 & R4)

Prayer: This Civil Miscellaneous Appeal is filed under Section
173 of Motor Vehicles Act, 1988, against the judgment and decree
dated 22.04.2014 made in M.C.O.P.No.46 of 2011 on the file of
the Motor Accident Claims Tribunal, Sub Court, Sankari.

For Appellants :Ms.T.Gayathri
for Mr.C.Kulanthaivel

For R2 :Mr.T.Ravichandran

For R3 :Mr.D.Venkatachalam

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 22.04.2014 made in M.C.O.P.No.46 of 2011 on the file of the Motor Accident Claims Tribunal, Sub Court, Sankari.

2.The appellants are claimants in M.C.O.P.No.46 of 2011 on the file of the Motor Accident Claims Tribunal, Sub Court, Sankari. They filed the said claim petition claiming a sum of Rs.12,00,000/- as compensation for the death of one Bhuvaneshwaran @ Kumar, who died in the accident that took place on 06.11.2010. 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 Mahindra Maxi cab belonging to the 1st respondent and directed the 2nd respondent-Insurance Company to pay a sum of Rs.4,71,000/- as compensation to the appellants and dismissed the claim petition against the respondents 3 and 4. 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 contended that the deceased was working as a sales and collection manager at Jayalakshmi Oil store and was earning a sum of Rs.10,000/- per month. The Tribunal without considering the documents filed by the appellants erroneously fixed a meagre sum of Rs.4,500/- per month as notional income of the deceased. The deceased was aged 28 years at the time of the accident. The Tribunal has not granted any enhancement towards future prospects. The Tribunal erred in applying multiplier '13' instead of applying multiplier '17', taking into consideration the age of the mother of the deceased. The Tribunal has not granted any amount towards loss of estate and prayed for enhancement of compensation.

4.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the appellants have not filed any documents to prove the avocation and age of the deceased. The Tribunal considering Ex.P17-salary certificate, which was issued by the brother of the deceased, rejected the same and fixed the notional income of the deceased as Rs.4,500/- per month. The same is not meagre. A sum of Rs.1,00,000/- awarded by the Tribunal towards loss of love and affection is excessive. The appellants have not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

5.Mr.D.Venkatachalam, the learned counsel appearing for the 3rd respondent-Transport Corporation contended that the Tribunal dismissed the claim petition against the 3rd respondent-Transport Corporation and the 3rd respondent is not a necessary party in the appeal and prayed for dismissal of the appeal against the 3rd respondent.

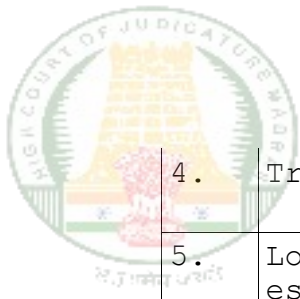


6. Heard the learned counsel appearing for the appellants as well as the 2nd respondent-Insurance Company and 3rd respondent-Transport Corporation and perused all the materials available on record.

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7. From the materials available on record, it is seen that the appellants have contended that the deceased was working as a sales and collection manager at Jayalakshmi Oil store and was earning a sum of Rs.10,000/- per month. They produced Ex.P17-salary certificate to prove the said contention. The Tribunal rejected the same on the ground that Ex.P17-salary certificate was issued by brother of the deceased. The Tribunal fixed a sum of Rs.4,500/- per month as notional income of the deceased. The same is meagre. The accident is of the year 2010. Hence, a sum of Rs.7,000/- is fixed as the monthly income of the deceased. The deceased was aged 28 years at the time of the accident. The Tribunal has not granted any enhancement towards future prospects and the appellants are entitled to 40% enhancement towards future prospects. Taking into consideration the age of the mother of the deceased, the Tribunal applied multiplier '13'. As per the judgment of the Hon'ble Apex Court reported in National Insurance Company v. Pranay Sethi reported in 2017(2) TNMAC 609 (SC), the multiplier has to be applied on the basis of the age of the deceased. The correct multiplier is '17'. The deceased was a bachelor. After deducting 50% towards personal expenses of the deceased, the amount granted by the Tribunal towards loss of dependency is modified to Rs.9,99,600/- $[(Rs.7,000/- + 2,800 (40\% \times Rs.7,000) \times 12 \times 17 \times 1/2)]$. The Tribunal has granted a sum of Rs.1,00,000/- towards loss of love and affection and the same is reduced to Rs.80,000/- (Rs.40,000/- each). The Tribunal has not granted any amount towards loss of estate. A sum of Rs.15,000/- is granted towards loss of estate. The amounts awarded by the Tribunal under the heads of transport and funeral expenses 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	3,51,000	9,99,600	Enhanced
2.	Love & affection	1,00,000	80,000	Reduced
3.	Funeral expenses	15,000	15,000	Confirmed



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4.	Transport	5,000	5,000	Confirmed
5.	Loss of estate	-	15,000	Granted
	Total	Rs.4,71,000/-	Rs.11,14,600/- - Rs.6,43,600/-	Enhanced by

8. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.4,71,000/- is hereby enhanced to Rs.11,14,600/- 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 2nd 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 1 & 2 are permitted to withdraw their respective share of the award amount on the basis of apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn by filing necessary applications before the Tribunal. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

mtl

Sub Assistant Registrar

To

1.The Subordinate Judge,
Motor Accidents Claims Tribunal,
Sankari.

Copy to: The Section Officer,
V.R. Section, High Court, Madras.

+1 cc to Mr.C.Kulanthaivel, Advocate, S.R.No.38885

+1 cc to Mr.D.Venkatachalam, Advocate, S.R.No.38910

C.M.A.No.1703 of 2015

SPD(CO)
SSM(30/09/2019).