

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No. 1880 of 2015

1.D. Devi

2.Minor D. Karthikeyan

3.Minor D. Kamalesh

4.R. Ayyammal

5.D. Renu Gounder .. Appellants/Petitioners
(minors 2 and 3 are rep. By their mother and
natural guardian, 1st appellant)

Vs.

1.A. Suresh

2.M/s. Reliance General Insurance Co. Ltd.,
Rai Tower II Floor, Plot No. 2054,
Second Avenue,
Anna Nagar,
Chennai 600 040. .. Respondents/ Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 18.02.2015, made in M.C.O.P.No. 1913 of 2013, on the file of the Chief Judge, Small Causes Court, (Motor Accident Claims Tribunal), Chennai.

For Appellants : Mr. T.G. Balachandran

For Respondents: No appearance (For R1)

Mr. S. Arun Kumar (For R2)

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 18.02.2015, made in M.C.O.P.No. 1913 of 2013, on the file of the Chief Judge, Small Causes Court, (Motor Accident Claims Tribunal), Chennai.

2.The appellants are the claimants in M.C.O.P.No. 1913 of 2013, on the file of the Chief Judge, Small Causes Court, (Motor Accident Claims Tribunal), Chennai. They filed claim petition, claiming a sum of Rs.30,00,000/- as compensation for the death of one R. Duraisamy, who died in the accident that took place on 15.02.2013.

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 lorry belonging to the 1st respondent, insured with the 2nd respondent and directed the respondents jointly and severally to pay a sum of Rs.14,29,000/- as compensation to the appellants.

4.Not being satisfied with the amounts awarded by the Tribunal in the award dated 18.02.2015, made in M.C.O.P.No. 1913 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 a Cook in Hotel Saravana Bhavan and retired voluntarily, to start Catering Service on his own. The appellants have marked Ex.P7- series wage slips, Ex.P8 - bank pass book, Ex.P12 - pay slips of P.W.13, Co- employee to prove the income. The Tribunal without considering the fact that the deceased was earning a sum of Rs.13,500/- per month during March 2010 and April 2010, fixed only a meagre sum of Rs.8,000/- per month as notional income of the deceased. The Tribunal ought to have awarded a sum of Rs.1,00,000/- each towards loss of consortium and loss of expectations of life. In any event, the total compensation awarded by the Tribunal is meagre and prayed for enhancement of the same.

6.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal, holding that except wage slips marked as Ex.P7 series, no other documents are filed to prove the income of the deceased and since the deceased resigned his job during the month of December, 2012 and said to have started Durai Catering Services, fixed the notional income at Rs.8,000/- per month and awarded compensation towards pecuniary loss. The same is not meagre. The total compensation awarded by the Tribunal is just compensation. The appellants have not made out any case for enhancement of the same and prayed for dismissal of the appeal.

7.Heard learned counsel appearing for the appellants as well as the learned counsel appearing for the 2nd respondent and perused the materials available on record. Though notice has been served on the 1st respondent and his name is printed in the cause-list, there is no representation for him either in person or through counsel.

8. It is the contention of the appellants that the deceased worked as Cook in Hotel Saravana Bhavan and retired voluntarily and started Durai Catering Service and was earning a sum of Rs.25,000/- per month. From the materials on record, it is seen that the Tribunal, in the absence of any documentary evidence to prove the income earned from the said Durai Catering Service, fixed a sum of Rs.8,000/- per month as notional income of the deceased. The accident is of the year 2013. The amount fixed by the Tribunal towards monthly income is meagre. Considering the nature of work, the monthly income of the deceased is fixed at Rs.10,000/-. The deceased was aged 30 years at the time of accident. The Tribunal failed to grant any enhancement towards future prospects of the deceased. The appellants are entitled to 40% enhancement towards the future prospects. After deducting 1/4th towards the personal expenses of the deceased and applying multiplier '17', the amounts awarded by the Tribunal towards loss of dependency is modified to Rs.21,42,000/- {[Rs.10,000/- + Rs.4,000/- (40% of Rs.10,000/-)] x 12 x 3/4 x 17}. The Tribunal has awarded excess amount of Rs.50,000/- towards loss of consortium to the 1st appellant. The same is reduced to Rs.40,000/-. In addition to awarding loss of consortium to the 1st appellant/wife of the deceased separately, the Tribunal has awarded a sum of Rs.25,000/- each towards loss of love and affection to the appellants 1 to 5. The same is erroneous. The amounts granted to the 1st appellant for loss of love and affection is set aside and the amounts awarded by the Tribunal towards loss of love and affection is modified to Rs.40,000/- each to the appellants 2 & 3 and Rs.25,000/- each to the appellants 4 and 5. Rs.25,000/- awarded by the Tribunal towards funeral expenses is excessive. The same is reduced to Rs.15,000/-. The Tribunal has not awarded any amount towards loss of estate. The appellants are entitled to a sum of Rs.15,000/- towards the loss of estate. The amounts awarded by the Tribunal towards transportation is just and reasonable and the same 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.	Pecuniary benefits	12,24,000/-	21,42,000/-	Enhanced
2.	Loss of consortium	50,000/-	40,000/-	Reduced

3.	Loss of love and affection to appellants 2 to 5	1,25,000/-	1,30,000/-	Enhanced
4.	Funeral expenses	25,000/-	15,000/-	Reduced
5.	Transport expenses	5,000/-	5,000/-	Confirmed
6.	Loss of estate	-	15,000/-	Granted
	Total	14,29,000/-	23,47,000/-	Enhanced by Rs.9,18,000/-

9. In the result, the appeal is partly allowed and amount awarded by the Tribunal at Rs.14,29,000/- is enhanced to Rs.23,47,000/- along with interest and costs. The respondents are jointly and severally 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. 1913 of 2013. On such deposit, the appellants 1, 4 & 5 are permitted to withdraw their share of the award amount with proportionate interest and costs, as per the ratio of apportionment fixed by the Tribunal, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. The shares of the minor appellants 2 and 3 are directed to be deposited in any one of the Nationalized Bank, till the minors attain majority. The 1st appellant, mother of the minor appellants 2 and 3 is permitted to withdraw the accrued interest, once in three months for the welfare of the minor appellants 2 and 3. No costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

gsa

To

1.The Chief Judge,
Small Causes Court,
(Motor Accident Claims Tribunal),Chennai.

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

+lcc to Mr.T.G. Balachandran , Advocate SR.No. 103281

C.M.A.No. 1880 of 2015

A.SK(12/10/2020)