IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.06.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.No.1886 of 2015

Ganesan (Died)

Angathal ... Appellant/2nd Petitioner

Vs.

1.Muthukumar

2.New India Assurance Company Ltd.,
No.11-20, Government Arts College Road,
Coimbatore ... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 11.12.2012 made in M.C.O.P.No.1354 of 2006 on the file of the Motor Accident Claims Tribunal, III Additional District & Sessions Court, Coimbatore.

For Appellants : Mr.Ma.P.Thangavel

For R2 :Mrs.S.R.Sumathi

J U D G M E N T

The Civil Miscellaneous Appeal is filed by the appellant/claimant seeking enhancement of compensation granted by the Tribunal in the award dated 11.12.2012 made in M.C.O.P.No.1354 of 2006 on the file of the Motor Accident Claims Tribunal, III Additional District & Sessions Court, Coimbatore.

2.The brief facts is as follows:
The deceased met with an accident on 25.04.2006 at about 4.00 pm while he was riding two wheeler bearing Reg.No.TN-38-S-5853 Coimbatore Sathy road from north to south direction and at that time the tempo bearing Reg.No.TN-39-C-7645 was driving in a rash and negligent manner which came from the opposite direction and dashed against the deceased and the deceased sustained severe injuries and criminal case also registered against the driver of the tempo by the concerned police station and inspite of the

treatment given the injured Govindaraj died. The claimants, who are the parents of the deceased filed M.C.O.P.No.1354 of 2006 on the file of the Motor Accident Claims Tribunal, III Additional District & Sessions Court, Coimbatore. Initially one Ganesan filed the said claim petition, claiming a sum of Rs.15,00,000/- as compensation for the death of his son Govindaraj, who died in the accident. Pending claim petition the said Ganesan died and his legal heir was impleaded as respondent. 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 Tempo belonging to the 1st respondent and directed both the 1st respondent as well as 2nd / respondent Insurance Company to pay a sum of Rs.6,56,000/- as compensation to the appellant. Not being satisfied with the amount awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

3.The learned counsel appearing for the appellant contended that the appellant has proved that the deceased was running a G.Raj Metal Sheet Works and was earning a sum of Rs.10,000/- per month, he was income tax assessee as per Ex.P9, he filed the income tax returns as per Ex.P11, and his bank account statement was marked as Ex.P10. But the Tribunal has erroneously fixed a meagre sum of Rs.7,000/- per month as notional income of the deceased without considering the above documents. The Tribunal has applied multiplier '15' by taking the age of the mother instead of taking the age of the deceased. The amounts awarded by the Tribunal under different heads are also meagre and prayed for enhancement of compensation.

4.Per contra, learned counsel appearing for the 2nd respondent/Insurance Company contended that the appellants have not proved the avocation and income of the deceased. In the absence of any material, the Tribunal has rightly fixed notional income of the deceased at Rs.7,000/- per month. The amounts awarded by the Tribunal under different heads are not meagre and prayed for dismissal of the appeal.

5.Heard Mr.Ma.P.Thangavel, learned counsel appearing for the appellant and Mrs.S.R.Sumathi, learned counsel appearing for 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 contended that the deceased was running a G.Raj Metal Sheet Works and was earning a sum of Rs.10,000/- per month. The appellants have produced Ex.P9 - income tax assessee, he filed Ex.P11 - income tax returns, and his bank account was marked as Ex.P10. The Tribunal has fixed notional income of the deceased at Rs.7,000/- per month. Since the accident is of the year 2006, the notional income fixed by the Tribunal has to be increased. Hence this Court enhanced notional income of the deceased from Rs.7,000/- to Rs.10,000/-. The deceased was aged 25 years at the time of accident. As per the Judgment of the Hon'ble Apex Court, the age of the deceased has to be taken into account instead of taking into account the age of the father or mother for applying multiplier. The Tribunal has applied multiplier '15', but the correct multiplier is '17'. The deceased was a bachelor at the time of the accident, the Tribunal has correctly deducted 50% towards personal expenses. The appellant is entitled to 40% enhancement towards future prospects. Applying multiplier '17' and deducting 50% towards personal expenses of the deceased, the amount granted by the Tribunal towards loss of income is modified to Rs.14,28,000/- [Rs.10,000/- + 4,000 (Rs.10,000/- of 40%) x 12 x 17 x 50%)]. The Tribunal has awarded a meagre sum of Rs.20,000/- towards loss of love and affection, Rs.500/- towards transportation and Rs.5,000/- towards funeral expenses and the same are enhanced to Rs.40,000/-, Rs.10,000/- and Rs.15,000/- respectively. It is seen that the Tribunal has not awarded any amount towards loss of estate, filial consortium and medical expenses and this Court awards a sum of Rs.15,000/-, Rs.20,000/- and Rs.21,448/- respectively under those heads. The amount awarded by the Tribunal towards damages to cloth and articles 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 income	6,30,000	14,28,000	Enhanced
2.	Loss of love and affection	20,000	40,000	Enhanced
3.	Transportation charges	500	10,000	Enhanced
4.	Damages to cloth and articles	500	500	Confirmed
5.	Funeral expenses	5,000	15,000	Enhanced
6.	Loss of estate	-	15,000	Granted
7.	Filial consortium	-	20,000	Granted

8.	Medical bills	-	21,448	Granted
	Total	Rs.6,56,000/-	Rs.15,49,948/-	Enhanced by Rs.8,93,948/-

7.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.6,56,000/- is hereby enhanced to Rs.15,49,948/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant/claimant is directed to pay necessary Court fee, if any, on the enhanced compensation.

8.Both 1st respondent as well as 2nd respondent-Insurance Company are 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 appellant/claimant is permitted to withdraw the enhanced award amount along with interest and costs, less the amount if any, already withdrawn by filing necessary applications before the Tribunal. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mtl
To

1.The III Additional District & Sessions Judge,
Motor Accidents Claims Tribunal,
Coimbatore.

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

+1cc to Mr.Ma.P.Thangavel, Advocate Sr.51821
+1cc to Mrs.S.R.Sumathy, Advocate Sr.51576

C.M.A.No.1886 of 2015

rv[co]
srg 15/10/2020