

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.03.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1187 of 2016

1.Valliammal
2.Dasarathan
3.Balakrishnan
4.Gangadharan

... Appellants/Petitioners

Vs.

1.K.Suresh Babu
2.Reliance General Insurance Co. Ltd.,
At Heavi Tree, Unit No.1,
3rd Floor, No.23, Tank Road,
Chetpet, Chennai 600 031.

... Respondents /Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 08.01.2016, made in M.C.O.P.No.81 of 2012, on the file of the IV Additional District Court, (Motor Accident Claims Tribunal), Ponneri.

For Appellants : Mr.T.P.Sekar

For R2 : No appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellants-claimants, seeking enhancement of the compensation granted by the award dated 08.01.2016, made in M.C.O.P.No.81 of 2012, on the file of the IV Additional District Court, (Motor Accident Claims Tribunal), Ponneri.

2.The appellants-claimants filed M.C.O.P.No.81 of 2012, on the file of the IV Additional District Court, (Motor Accident Claims Tribunal), Ponneri, claiming a sum of Rs.4,00,000/- as compensation for the death of one Natesan, who died in the accident that took place on 19.01.2011.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to

rash and negligent riding by the 1st respondent, rider-cum-owner of the motorcycle and directed the 2nd respondent-Insurance Company to pay a sum of Rs.1,00,000/- as compensation to the appellants.

4. Not being satisfied with the amounts granted by the Tribunal in the award dated 08.01.2016, made in M.C.O.P.No.81 of 2012, the appellants have come out with the present appeal.

5. The learned counsel appearing for the appellants contended that the deceased was working as a coolie and was earning a sum of Rs.5,000/- per month. The Tribunal erroneously fixed a meagre sum of Rs.15,000/- per annum as the notional income of the deceased and deducted 1/3rd towards personal expenses and by applying the multiplier method, granted a meagre sum of Rs.56,250/- towards loss of dependency. The 1st appellant is wife of the deceased. The Tribunal has granted only a meagre sum of Rs.25,000/- towards loss of love and affection. The Tribunal failed to grant any amount towards loss of consortium and loss of estate and prayed for enhancement of the compensation.

6. Heard the learned counsel appearing for the appellants and perused the materials on record.

7. The learned counsel for the appellants submitted that the 1st respondent remained exparte before the Tribunal and the Tribunal has directed only the 2nd respondent to pay the award amount to the appellants and hence, no notice is necessary for the 1st respondent. Though notice has been served on the 2nd respondent and its name is printed in the cause list, there is no representation for them either in person or through counsel.

8. From the materials on record, it is seen that the appellants contended that the deceased was working as a coolie and was earning a sum of Rs.5,000/- per month. They have failed to prove their contention before the Tribunal. In the absence of material evidence to prove the occupation and income, considering the age of the deceased, the Tribunal has fixed a sum of Rs.15,000/- per annum as the notional income of the deceased. The same is very meagre. The accident is of the year 2011. As per the post-mortem report, the deceased was aged 78 years at the time of accident. Considering the entire materials on record, the monthly income of the deceased is fixed at Rs.4,500/- and after deducting 1/3rd towards the personal expenses of the deceased, the amount granted by the Tribunal towards loss of dependency is modified to Rs.1,80,000/- [Rs.4,500/- x 12 x 5 x 2/3]. The 1st appellant is the wife of the deceased. The Tribunal has not granted any amount for loss of consortium and loss of estate. Hence, a sum of Rs.40,000/- is

granted towards loss of consortium to the 1st appellant and a sum of Rs.15,000/- towards loss of estate to the appellants. The Tribunal has granted excessive amount for funeral expenses and the same is reduced to Rs.15,000/-. The amount granted towards loss of love and affection is set aside. 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	56,250/-	1,80,000/-	enhanced
2.	Funeral expenses	18,750/-	15,000/-	Reduced
3.	Loss of love and affection	25,000/-	-	Set aside
4.	Loss of consortium	-	40,000/-	Granted
5.	Loss of estate	-	15,000/-	Granted
	Total	1,00,000/-	2,50,000/-	Enhanced by Rs.1,50,000/-

9. In the result, the appeal is partly allowed and award granted by the Tribunal at Rs.1,00,000/- is enhanced to Rs.2,50,000/- along with interest and costs. The 2nd respondent is directed to deposit the enhanced award amount 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.81 of 2012. On such deposit, the appellants/claimants are permitted to withdraw their share of the enhanced award amount along with interest and costs, as per the ratio of apportionment fixed by the Tribunal, less the amount already withdrawn if any, by filing necessary application before the Tribunal. The appellants are directed to pay the necessary Court fee, if any, for the enhanced award amount now determined by this Court. No costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

gsa

To

1.The IV Additional District Judge,
(Motor Accident Claims Tribunal),
Ponneri.

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

+1cc to Mr.T.P.Sekar, Advocate sr.28889

C.M.A.No.1187 of 2016

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