

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.01.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2030 of 2015

1.S.Preethi

2.G.Kuppu

.. Appellants/Petitioners

Vs.

1.J.Prabakar

(Remained ex-parte before the Trial Court)

2.ICICI Lombard General Insurance Co. Ltd.,

Chottabhai Centre,

2nd and 3rd Floors,

140, Nungambakkam High Road,

Chennai - 34.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and decree dated 30.04.2015 made in M.C.O.P.No.3935 of 2012, on the file of the Chief Judge, Small Causes Court, Motor Accidents Claims Tribunal, Chennai.

For appellants : Mr.Ayyathurai
for Mr.N.M.Muthurajan

For R1 : No appearance

For R2 : M/s.R.Sreevidya

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award dated 30.04.2015 made in M.C.O.P.No.3935 of 2012, on the file of the Chief Judge, Small Causes Court, Motor Accidents Claims Tribunal, Chennai.

2.The appellants/claimants filed M.C.O.P.No.3935 of 2012, on the file of the Chief Judge, Small Causes Court, Motor Accidents Claims Tribunal, Chennai, claiming a sum of Rs.19,00,000/- as compensation for the death of one Sundaram, husband of the 1st appellant and son of the 2nd appellant, who died in the accident that took place on 16.07.2012.

3.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the van

belonging to the 1st respondent and directed the 2nd respondent-Insurance Company to pay a sum of Rs.9,48,000/- as compensation to the appellants/claimants at the first instance and recover the same from the 1st respondent.

4. Not being satisfied with the amounts granted by the Tribunal in the award dated 30.04.2015 made in M.C.O.P.No.3935 of 2012, the appellants/claimants have come out with the present appeal.

5. The learned counsel appearing for the appellants contended that the deceased was working as a Bio Medical Analyst and T.V., Mechanic and was earning a sum of Rs.9,000/- from the M/s.MM Hospital, Mugappair, Chennai and a sum of Rs.10,000/- from the M/s.Sophia Tech Systems and Services as a T.V., Mechanic. The Tribunal erroneously fixed the notional income of the deceased at Rs.6,000/- per month, on the ground that there is no documentary evidence produced by the appellants. The deceased was 32 years at the time of accident. The Tribunal has not awarded any amounts towards future prospects and amounts awarded by the Tribunal under different heads are very meagre and prayed for enhancement of the compensation.

6. Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the appellants have failed to substantiate the avocation and income of the deceased. The Tribunal in the absence of any evidence, fixed the notional income of the deceased at Rs.6,000/- per month, which is not meagre. The amounts awarded by the Tribunal under conventional heads are excessive and prayed for dismissal of the appeal.

7. Heard the learned counsel appearing for the appellants as well as the 2nd respondent-Insurance Company and perused the materials available on record.

8. From the materials on record, it is seen that the appellants have contended that the deceased was working as a Bio Medical Analyst-cum-T.V., Mechanic and was earning a sum of Rs.9,000/- from the M/s.MM Hospital, Mugappair, Chennai and a sum of Rs.10,000/- from the M/s.Sophia Tech Systems and Services as a T.V., Mechanic. On the failure of the appellants to substantiate their claim, the Tribunal has fixed a sum of Rs.6,000/- as notional income of the deceased. The accident occurred in the year 2012. The amounts fixed by the Tribunal is very meagre. Hence, a sum of Rs.9,000/- per month is fixed as a notional income of the deceased. The deceased was aged 32 years at the time of accident. The Tribunal has applied the multiplier of '16', but has not awarded any amounts towards future prospects. The appellants are entitled to 40% enhancement towards future prospects. Hence, the loss of pecuniary benefits is modified as Rs.16,12,800/- {[Rs.9,000 + Rs.5,800 (40% of Rs.9,000/-)] x 12 x 16 x 2/3}. The amounts

granted by the Tribunal under all other heads are just and reasonable and they are hereby confirmed. Thus, the compensation awarded by the Tribunal is enhanced as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Pecuniary loss	7,68,000/-	16,12,800/-	enhanced
2.	Loss of consortium	50,000/-	50,000/-	confirmed
3.	Loss of love and affection	1,00,000/-	1,00,000/-	confirmed
4.	Funeral expenses	25,000/-	25,000/-	confirmed
5.	Transport Expenses	5,000/-	5,000/-	confirmed
	Total	9,48,000/-	17,92,800/-	enhanced by Rs.8,44,800/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and award granted by the Tribunal at Rs.9,48,000/- is enhanced to Rs.17,92,800/- along with interest and costs. The 2nd respondent-Insurance Company is directed to deposit the award amount 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, to the credit of M.C.O.P.No.3835 of 2012, at the first instance and recover the same from the 1st respondent. On such deposit, the appellants/claimants are permitted to withdraw the award amount, as per the ratio of apportionment fixed by the Tribunal, less the amount already withdrawn, if any, by filing necessary applications before the Tribunal. No costs.

Sd/-

Assistant Registrar(CS-IV)

//True copy//

Sub Assistant Registrar

gsa

To

1.The Chief Judge,
Small Causes Court,
Motor Accidents Claims Tribunal,
Chennai.

2. The Section Officer,
VR Section, High Court, Madras

+1cc to Mr.N.M.Muthurajan, Advocate SR.No.6735

+1cc to M/s.R.Sreevidya, Advocate SR.No.7733

C.M.A.No.2030 of 2015

GP (CO)
GMY (03/12/2019)



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