

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1319 of 2016

1.Chellammal
2.Ariyamuthu

.. Appellants/Petitioner

Vs.

1.The Managing Director,
Tamil Nadu State Transport
Corporation Limited,
No.12, Ramakrishna Road,
Salem 7

2.P.Prabhakaran

3.IFFCO-Tokio General Insurance
Company Limited,
Old No.302, New No.24,
Jhan Tower, 2nd floor,
LIC Colony, Salem 636 004.

.. Respondents

(R2 remained exparte before Tribunal)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 29.01.2014 made in M.C.O.P.No.703 of 2010 on the file of the Motor Accident Claims Tribunal, Special District Court, Salem.

For Appellants : M/s.A.Subadra for
M/s.C.Kulanthaivel

For Respondents : Mr.D.Venkatachalam for R1
Mr.J.Michal Visuvasam for R3

R2 : Exparte

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation of the award dated 29.01.2014 made in M.C.O.P.No.703 of 2010 on the file of the Motor Accident Claims Tribunal, Special District Court, Salem.

2.The appellants are the claimants in M.C.O.P.No.703 of 2010 on the file of the Motor Accident Claims Tribunal, Special District Court, Salem. They filed the said claim petition claiming a sum of Rs.15,00,000/- as compensation for the death of one Kamalakannan, who died in the accident that took place on 20.11.2009.

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 Transport Corporation bus belonging to 1st respondent as well as the rider of the motorcycle belonging to the second respondent and insured with the third respondent. The Tribunal directed both the 1st respondent as well as the 3rd respondent-Insurance Company to pay 50% each of Rs.3,54,000/- as compensation to the appellants.

4.Not being satisfied with the amount awarded by the Tribunal, the appellants have come out with the present appeal seeking enhancement of compensation.

5.The learned counsel appearing for the appellants contended that the deceased was working as service manager at Mobile plaza and was earning a sum of Rs.7,000/- per month. The Tribunal fixed a meagre sum of Rs.6,000/- per month as notional income of the deceased. The deceased was aged 29 years at the time of the accident. The Tribunal has not granted any enhancement towards future prospects. The Tribunal erred in applying multiplier '9' instead of applying multiplier '17'. The Tribunal has not granted any amount towards loss of estate, transportation and loss of articles and also prayed for enhancement towards loss of love and affection and funeral expenses.

6.Per contra, the learned counsel appearing for the first respondent/ Transport Corporation as well as third respondent-Insurance Company contended that the appellants failed to prove the avocation and income of the deceased. In the absence of any material evidence to prove the income of the deceased, the Tribunal has rightly fixed monthly income of the deceased at Rs.6,000/- per month and awarded a sum of Rs.3,24,000/- towards loss of dependency, which is not meager. The Tribunal has erred in awarding an excessive amount of Rs.20,000/- towards love and affection. In any event, the appellants have not made out any case for enhancement and prayed for dismissal of the appeal.

7.Heard the learned counsel appearing for the appellants as well as the 1st respondent-Transport Corporation and 3rd respondent-Insurance Company and perused all the materials available on record.

8. From the materials available on record, it is seen that the appellants have contended that the deceased was working as a service manager at Mobile Plaza and was earning a sum of Rs.7,000/- per month. They produced Ex.P8-salary certificate to prove the said contention. But they have failed to examine author of the document to substantiate the same. Hence, the Tribunal fixed a sum of Rs.6,000/- per month as notional income of the deceased. The same is meager. The accident is of the year 2009. Hence, a sum of Rs.6,500/- is fixed as the monthly income of the deceased. The deceased was aged 29 years at the time of the accident. The Tribunal has not granted any enhancement towards future prospects. 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 '9'. 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. Accordingly, 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.9,28,200/- [(Rs.6,500/- + 2,600 (40% X Rs.6,500) x 12 x 17 x 1/2)]. The Tribunal has granted a sum of Rs.20,000/- towards loss of love and affection, which is meagre and the same is enhanced to Rs.80,000/- (Rs.40,000/- x2). The Tribunal has not granted any amount towards loss of estate. A sum of Rs.15,000/- is granted towards loss of estate. The Tribunal awarded a sum of Rs.10,000/- towards funeral expenses and the same is hereby enhanced to Rs.15,000/- 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	3,24,000	9,28,200	enhanced
2.	Love and affection (each Rs.40,000/-)	20,000/-	80,000/-	enhanced
3.	Loss of estate	-	15,000/-	granted
4.	Funeral expenses	10,000/-	15,000/-	enhanced
	Total	Rs.3,54,000/-	Rs.10,38,200/-	enhanced by Rs.6,84,200/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.3,54,000/- is hereby enhanced to Rs.10,38,200/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. Both the first respondent/ Transport Corporation as well as the third respondent/ Insurance Company are directed to deposit 50% each of the award amount now determined by this Court, along with interest and costs, less the amount already deposited, if any, within a period of twelve weeks from the date of receipt of a copy of this judgment. The learned counsel for the third respondent / Insurance Company submitted that they have already deposited, the amount awarded by the Tribunal. Therefore, the third respondent / Insurance Company is directed to deposit the balance of enhanced amount. On such deposit, the appellants are permitted to withdraw their respective share of the enhanced award amount now determined by this Court, as per the ratio of apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. No costs.

Sd/-

Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

vkr

To

1. The Special District Judge,
Motor Accident Claims Tribunal,
Salem.

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

+1cc to Mr.C.Kulanthaivel, Advocate SR.No.105728

+1cc to Mr.J.Michal Visuvasam, Advocate SR.No.105694

+1cc to Mr.D.Venkatachalam, Advocate SR.No.105874

C.M.A.No.1319 of 2016

MP (CO)
GMY (18/11/2020)