

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2305 of 2015

1.Evelyn Selvaraj
2.Roslin Jayakumar

.. Appellants/Claimants

Vs.

1.B.Mageswaran

2.Shri Ram General Insurance Co. Ltd.,
No.66, 2nd floor, city centre complex
Thirumalaipillai road
Chennai-600 017.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 19.08.2014 made in M.C.O.P.No.5433 of 2012 on the file of Motor Accident Claims Tribunal, Small Causes Court No.IV, Chennai.

For Appellants : Mr.N.M.Elumalai

For R2 : Mr.Dhakshnamoorthy

R1 : Given UP

J U D G M E N T
सत्यमेव जयते

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 19.08.2014 made in M.C.O.P.No.5433 of 2012 on the file of Motor Accident Claims Tribunal, Small Causes Court No.IV, Chennai.

2.The appellants are claimants in M.C.O.P.No.5433 of 2012 on the file of Motor Accident Claims Tribunal, Small Causes Court No.IV, Chennai. They filed the said claim petition claiming a sum of Rs.12,00,000/- as compensation for the death of one T.A.John Selvaraj, who died in the accident that took place on 14.07.2012.

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 auto-rickshaw belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said auto-rickshaw to pay a sum of Rs.5,25,000/- as compensation to the appellants.

4.Not being satisfied with the amounts 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/claimants contended that the deceased after his retirement joined in Sun Green Ventilation Systems Private Limited, Chennai, as Technical Support Engineer and was earning a sum of Rs.19,432/- per month. The appellants have examined P.W.3, co-employer of the deceased and produced Ex.P12/salary certificate to prove the avocation and income of the deceased. The Tribunal without considering the same, erred in fixing a sum of Rs.12,000/- per month as notional income of the deceased. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the Tribunal has rejected the evidence of P.W.3 on the ground that he is not the competent person to prove the income of the deceased and in the absence of any material evidence, the notional income fixed by the Tribunal is not meagre. The Tribunal after considering the materials available on record, has awarded compensation, which is not meagre. The appellants have not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

7.Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the 2nd 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 aged 68 years and was working as Technical Support Engineer in Sungreen Ventilation Systems Pvt. Ltd. and was earning a sum of Rs.19,432/- per month. The appellants have examined one Sarathbabu, co-employer of the deceased as P.W.3 and marked Ex.P12/salary certificate to prove the income of the deceased. The Tribunal did not accept the evidence of P.W.3 and Ex.P12/salary certificate as P.W.3 is not an authorised person

to depose about the income of the deceased and fixed a sum of Rs.12,000/- per month as notional income of the deceased. It is seen from the records that the deceased was a qualified Engineer and to prove the same, the appellants have produced Exs.P10 to P12, B.E. Certificate, service certificate and salary certificate of the deceased. The accident is of the year 2012 and a sum of Rs.12,000/- per month fixed by the Tribunal as notional income of the deceased is meagre. Hence, a sum of Rs.14,000/- is fixed as notional income of the deceased. The Tribunal fixed age of the deceased as 69 years based on Ex.P9/Transfer Certificate and applied multiplier '5', which is proper. After deducting 1/3rd towards personal expenses, loss of dependency awarded by the Tribunal is modified to Rs.5,60,000/- (Rs.14,000/- X 12 X 5 X 2/3). The amounts awarded by the Tribunal towards loss of consortium, loss of love, happiness, paternal care & mental shock and funeral expenses are meagre and the same are hereby enhanced to Rs.40,000/-, Rs.40,000/- and Rs.15,000/- respectively. The Tribunal has not awarded any amount towards loss of estate and this Court awards a sum of Rs.15,000/- towards loss of estate. 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 or reduced
1.	Loss of dependency	4,80,000	5,60,000	Enhanced
2.	Loss of consortium	25,000	40,000	Enhanced
3.	Loss of love, happiness, paternal care and mental shock	10,000	40,000	Enhanced
4.	Funeral expenses	10,000	15,000	Enhanced
5.	Loss of estate	-	15,000	Granted
	Total	5,25,000	6,70,000	Enhanced by Rs.1,45,000 /-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at

Rs.5,25,000/- is hereby enhanced to Rs.6,70,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellants/claimants shall pay necessary Court fee, if any, on the enhanced compensation. The 1st appellant being wife of the deceased is entitled to a sum of Rs.3,97,500/- and the 2nd appellant being daughter of the deceased is entitled to a sum of Rs.2,72,500/- as compensation. The 2nd respondent/Insurance Company is 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 appellants/claimants are permitted to withdraw their respective share of the award amount along with proportionate interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-
Assistant Registrar (CCC)

//True copy//

Sub Assistant Registrar

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To

IV Judge
The Motor Accident Claims Tribunal
Small Causes Court, Chennai.

+1cc to Mr.N.M.Elumalai, Advocate SR.No.101533

+1cc to Mr.S.Dhakshnamoorthy, Advocate SR.No.101579

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C.M.A.No.2305 of 2015

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