

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1352 of 2016

1.Rani
2.Margasagayam
3.Thiagaraj
4.Rajalakshmi .. Appellants/Petitioners

Vs.

1.P.Praveen
2.The Oriental Insurance Company Limited
(R1-Exparte before the Tribunal) ..Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 19.09.2014 made in M.C.O.P.No.1090 of 2013 on the file of the Motor Accident Claims Tribunal, the learned Chief Judge, Small Causes Court, Chennai.

For Appellants : Mr.K.Varadha Kamaraj

For Respondents : Mr.P.Kandasamy for R2

R1 : Exparte

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation of the award dated 19.09.2014 made in M.C.O.P.No.1090 of 2014 on the file of the Motor Accident Claims Tribunal, the learned Chief Judge, Small Causes Court, Chennai.

2.The appellants are the claimants in M.C.O.P.No.1090 of 2013 on the file of the Motor Accident Claims Tribunal, the learned Chief Judge, Small Causes Court, Chennai. They filed the above said claim petition, claiming a sum of Rs.6,00,000/- as compensation for the death of one Ponnurangam, who died in the accident that took place on 26.11.2012.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the rider of the motor cycle bearing Registration No.TN 07 AD 0405 belonging to the first respondent and directed the first respondent as well as the second respondent, as insurer of the vehicle to jointly and severally pay a sum of Rs.2,30,000/- as compensation to the appellant.

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

5.The learned counsel appearing for the appellants contended that the deceased was a coolie and was earning a sum of Rs.500/- per day at the time of accident. The Tribunal fixed a sum of Rs.3,000/- as monthly income of the deceased, which is meagre. The Tribunal awarded only a sum of Rs.1,20,000/- as against the claim of Rs.4,00,000/- towards Pecuniary Loss. The Tribunal has failed to award any amounts towards loss of estate and the amounts awarded by the Tribunal under different heads are also meager and prayed for enhancement of compensation.

6.Per contra, Mr.P.Kandasamy, learned counsel appearing for the second respondent-Insurance Company contended that in the absence of any material evidence to prove the avocation and income of the deceased, the Tribunal rightly fixed monthly income of the deceased at Rs.3,000/- and awarded a sum of Rs.1,20,000 towards pecuniary loss, which is not meager. The Tribunal has erroneously awarded an excessive amount of Rs.25,000/- towards funeral expenses and Rs.20,000/- each to the appellants 1 to 4 towards love and affection. In any event, the total amounts awarded by the Tribunal is not meagre 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 second respondent-Insurance Company and perused the entire materials on record.

8.From the materials available on record, it is seen that the appellants as daughters and sons of the deceased have filed claim petition claiming compensation for the death of their father viz., Ponnurangam, who died in the accident. They have produced Ex.P5/legal heirship certificate. The Tribunal considering Ex.P5, held that the appellants are dependents of the deceased. The deceased was aged 70 years and he was a coolie and earning a sum of Rs.500/- per day at the time of the accident. Except oral evidence, the appellants have not produced any document to prove the avocation and income of the deceased.

In the absence of document to prove the avocation and income of the deceased, the Tribunal fixed a sum of Rs.3,000/- per month as notional income of the deceased. The accident occurred in the year 2012 and the monthly income of the deceased fixed by the Tribunal is meagre. Therefore, considering the age of the deceased and the year of accident, a sum of Rs.6,000/- per month is fixed by this Court as notional income of the deceased. There are four dependants of the deceased and the Tribunal has deducted 1/3rd towards personal expenses of the deceased, which is not proper. Therefore, 1/4th has to be deducted towards personal expenses. Thus, the compensation towards loss of pecuniary benefits is hereby enhanced to Rs.2,70,000/- [Rs.6,000 X 12 X 5 X 3/4]. The Tribunal has granted a sum of Rs.20,000/- each to the appellants towards loss of love and affection and the same is meagre. The appellants are entitled to a sum of Rs.40,000/- each to the appellants towards loss of love and affection. The Tribunal has awarded a sum of Rs.25,000/- towards funeral expenses, which is excessive and the same is hereby reduced to Rs.15,000/-. The Tribunal has not granted any amount towards loss of estate and hence, a sum of Rs.15,000/- is granted towards loss of estate. The compensation awarded by the Tribunal towards loss of transportation is reasonable and it 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 pecuniary benefits	1,20,000/-	2,70,000/-	enhanced
2.	Love and affection	80,000/-	1,60,000/-	enhanced
3.	Transportation	5,000/-	5,000/-	confirmed
4.	Loss of estate	-	15,000/-	granted
5.	Funeral expenses	25,000/-	15,000/-	reduced
	Total	Rs.2,30,000/-	Rs.4,65,000/-	enhanced by Rs.2,35,000/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,30,000/- is hereby enhanced to Rs.4,65,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The respondents 1 and 2 are jointly

and severally 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 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.

s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

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

+1 CC to Mr.K.Varadha Kamaraj, Advocate sr 105738.

+1 CC to Mr.P.Kandasamy, Advocate sr 105952.

C.M.A.No.1352 of 2016

KJ(CO)
SP(31/12/2020)

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