

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.2324 OF 2015

1.D.Kasthuri
2.D.Muniyammal
3.D.Ramesh
4.D.Senthil
5.Kathirvel

6.Minor Visu ... Appellants/Petitioners
(Minor represented by his mother
and next friend the first appellant
D.Kasthuri)

Vs.

1.A.Murugesan
2.The National Insurance Company Limited,
Plot No.C-20, AD-1, Second Avenue,
Anna Nagar, Chennai - 600 040.

... Respondents/Respondents

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 22.09.2010 made in M.C.O.P.No.4258 of 2007 on the file of the Motor Accident Claims Tribunal, Chief Court of Small Causes, Chennai.

For Appellants : Ms.A.Subadra
for Mr.V.Velu
For R1 : Exparte in Tribunal
For R2 : Mr.G.Udayasankar

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J U D G M E N T

The Civil Miscellaneous Appeal is filed by the appellants/claimants seeking enhancement of compensation granted by the Tribunal in the award dated 22.09.2010 made in M.C.O.P.No.4258 of 2007 on the file of the Motor Accident Claims Tribunal, Chief Court of Small Causes, Chennai.

2.The appellants are claimants in M.C.O.P.No.4258 of 2007 on the file of the Motor Accident Claims Tribunal, Chief Court of Small Causes, Chennai. The appellants filed the said claim petition claiming a sum of Rs.10,00,000/- as compensation for the death of one Durai, who died in the accident that took place on 30.09.2007. 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 lorry belonging to the 1st respondent and directed the 2nd respondent/Insurance Company to pay a sum of Rs.5,55,000/- as compensation to the appellants.

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

4.The learned counsel appearing for the appellants contended that the deceased was working as a mason and was earning a sum of Rs.350/- per day at the time of the accident but the Tribunal has fixed a meagre sum of Rs.4,500/- per month as notional income of the deceased. The deceased was aged 44 years at the time of the accident. The Tribunal has not awarded any amount towards future prospects. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

5.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the appellants have not filed any documents to prove the avocation and income of the deceased. In the absence of any material evidence, the Tribunal has fixed Rs.4,500/- per month as notional income of the deceased which is not meagre. The appellants have not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

6.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.

7.From the materials available on record, it is seen that the appellants have contended that the deceased was working as a mason and was earning a sum of Rs.350/- per day at the time of the accident. PW2 / co-worker of the deceased was examined to prove the same. Except oral evidence, the appellants have failed to produce any document to prove the income. In the absence of any material evidence, the Tribunal has fixed notional income of the deceased at Rs.4,500/- per month and the same is meagre. The accident is of the year 2007. A sum of Rs.6,000/- is fixed as monthly income of the deceased.

Considering Ex.P1 / FIR and Ex.P2 / postmortem certificate, the Tribunal has fixed the age of the deceased as 48 years at the time of accident. The Tribunal has not awarded any amount towards future prospects. The appellants are entitled to 25% towards future prospects. Since dependents are 6 in numbers, the Tribunal has rightly deducted $1/4^{\text{th}}$ towards the personal expenses of the deceased. The deceased was aged 48 years at the time of the accident and hence, the Tribunal rightly applied multiplier '13'. The amount granted by the Tribunal towards loss of dependency is modified to Rs.8,77,500/- (Rs.6,000/- + 1,500 (Rs.6,000/- x 25%) $12 \times 13 \times 3/4$). The Tribunal has awarded only a sum of Rs.10,000/- towards loss of consortium to 1st appellant and the same is enhanced to Rs.40,000/-. The Tribunal has granted a sum of Rs.8,500/- altogether towards funeral expenses and transportation and the same are meagre. The appellants are entitled to a sum of Rs.15,000/- towards funeral expenses and Rs.5,000/- towards transportation. The Tribunal has not granted any amount towards loss of estate. A sum of Rs.15,000/- is granted towards loss of estate. The amount awarded by the Tribunal towards loss of love and affection is reasonable and hence the same 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 dependency	5,26,500	8,77,500	Enhanced
2.	Loss of consortium for 1 st appellant	10,000	40,000	Enhanced
3.	Loss of love & affection	10,000	10,000	Confirmed
4.	Funeral expenses and transportation	8,500	15,000 5,000	Enhanced
5.	Loss of estate	-	15,000	Granted
	Total	Rs.5,55,000/-	Rs.9,62,500/-	Enhanced by Rs.4,07,500/-

8. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.5,55,000/- is hereby enhanced to Rs.9,62,500/- together with

interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellants/claimants are directed to pay necessary Court fee, if any, on the enhanced 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 1 to 5 are permitted to withdraw their respective share of the enhanced award amount on the basis of apportionment fixed by the Tribunal along with proportionate interest and costs, less the amount if any, already withdrawn by filing necessary applications before the Tribunal. The share of the minor 6th appellant is directed to be deposited in any one of the Nationalised Bank till he attains majority. The 1st appellant being the mother of the 6th appellant is permitted to withdraw the accrued interest once in three months for the welfare of the minor. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

mtl

To

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

Copy To

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

+1cc to Mr.V.Velu, Advocate, S.R.No.105433

+1cc to Mr.G.Udayasankar, Advocate, S.R.No.104684

C.M.A.No.2324 of 2015

VGI (CO)
CS/19/11/2020