

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.01.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2540 of 2015

1.Lourdu Mary
2.M.Selvi
3.K.Sakayamary
4.Alexandar
5.Juliet Arokiyarani .. Appellants / Petitioners

Vs.

1.N.Thanikachalam
(R1 was set exparte before the Tribunal)
2.New India Ass.Co. Ltd.
C/o.Motor III Party Claims Office
No.45 Moore Street
Chennai - 600 001. ... Respondents / Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 06.08.2013 made in M.C.O.P.No.1220 of 2010, on the file of the Motor Accident Claims Tribunal, Chief Judge, Court of Small Causes at Chennai.

For appellants : Mr.T.G.Balachandran
For R2 : Mr.J.Chandran

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award dated 06.08.2013 made in M.C.O.P.No.1220 of 2010, on the file of the Motor Accident Claims Tribunal, Chief Judge, Court of Small Causes at Chennai.

2.The appellants/claimants filed M.C.O.P.No.1220 of 2010, on the file of the Motor Accident Claims Tribunal, Chief Judge, Court of Small Causes at Chennai, claiming a sum of Rs.15,00,000/- as compensation for the death of one P.Mariadoss, husband of the 1st appellant and father of the appellants 2 to 5, who died in the accident that took place on 17.03.2010.

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 car belonging to the 1st respondent and directed the respondents to pay a sum of Rs.6,55,475/- as compensation to the appellants/claimants jointly and severally.

4. Not being satisfied with the amounts granted by the Tribunal in the award dated 06.08.2013 made in M.C.O.P.No.1220 of 2010, the appellants/claimants have come out with the present appeal.

5. The learned counsel appearing for the appellants contended that the deceased was running a nursery garden for more than 10 years and was earning a sum of Rs.15,000/- per month. The Tribunal without considering the evidences let in by the appellants, fixed a meagre sum of Rs.4,500/- per month as notional income of the deceased. The Tribunal ought to have granted 30% enhancement towards future prospects, instead of 15% and amounts awarded by the Tribunal under different heads are very meagre and prayed for enhancement of the compensation.

6. Mr. J. Chandran, learned counsel appearing for the 2nd respondent-Insurance Company contended that the appellants have not filed any documents and let in any evidence to prove the avocation and income of the deceased. In the absence of any evidences, the amount fixed by the Tribunal is correct and the appellants are not entitled for enhancement of compensation 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 available on record, it is seen that the appellants have contended that the deceased was running a nursery garden and was earning a sum of Rs.15,000/- per month. In the absence of any proof, the Tribunal has fixed a sum of Rs.4,500/- per month as income of the deceased. The accident is of the year 2010. The notional income of the deceased fixed at Rs.4,500/- is meagre and the same is enhanced to Rs.6,500/- per month. Further, the deceased was aged 50 years at the time of accident as per the postmortem report. The appellants are entitled to 25% enhancement towards future prospects. The Tribunal awarded only 15% enhancement for future prospects. Hence, the amount granted towards loss of dependency is modified as Rs.9,50,625/- {[Rs.6,500/- + Rs.1,625/- (25% of Rs.6,500/-) x 12 x 13 x $\frac{3}{4}$]}.

9. Similarly, the amounts awarded under the heads, loss of consortium and funeral expenses are meager. Hence, the same are enhanced to Rs.40,000/- and Rs.15,000/- respectively. The

Tribunal has not granted any amount towards loss of estate. Hence, a sum of Rs.15,000/- is granted under the said head. 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 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	6,05,475/-	9,50,625/-	enhanced
2.	Loss of consortium	10,000/-	40,000/-	enhanced
3.	Funeral expenses	10,000/-	15,000/-	enhanced
4.	Transportation	5,000/-	5,000/-	confirmed
5.	Loss of love and affection	25,000/-	25,000/-	confirmed
6.	Loss of estate	-	15,000/-	granted
	Total	6,55,475/-	10,50,625/-	enhanced by Rs.3,95,150/-

10. In the result, the appeal is partly allowed and award granted by the Tribunal at Rs.6,55,475/- is enhanced to Rs.10,50,625/- along with interest and costs. The respondents are jointly and severally 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.1220 of 2010. On such deposit, the appellants/claimants are directed to withdraw the award amount as per the ratio of apportionment fixed by the Tribunal, along with interest and costs, after adjusting the amount already withdrawn, if any, by making necessary applications before the Tribunal. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

gsa

To

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

+1cc to Mr.J.Chandran, Advocate, S.R.No.7489

+1cc to Mr.T.G.Balachandran, Advocate, S.R.No.6846

C.M.A.No.2540 of 2015

VBA(CO)
SSM(02/04/2019).



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