

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2776 of 2015

1.Ravishankar
2.Minor. Jaganathan .. Appellants/ Petitioners
(Minor 2nd appellant represented by his friend, brother 1st appellant)

Vs.

1.Sundaram
2.The Divisional Manager,
The United India Insurance Company Limited,
No.46, Katpadi Salai,
Vellore. .. Respondents/ Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 28.06.2010 made in M.C.O.P.No.594 of 2006 on the file of the Motor Accident Claims Tribunal, District Court, Thiruvannamalai.

For Appellants : Mr.F.Terry Chella Raja
For R2 : Mr.S.Arunkumar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 28.06.2010 made in M.C.O.P.No.594 of 2006 on the file of the Motor Accident Claims Tribunal, District Court, Thiruvannamalai.

2.The appellants are the claimants in M.C.O.P.No.594 of 2006 on the file of the Motor Accident Claims Tribunal, District Court, Thiruvannamalai. They filed the above said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the death of their mother Vasantha, who died in the accident that took place on 01.05.2006.

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 Auto belonging

to the first respondent and directed the respondents 1 and 2 to deposit a sum of Rs.4,09,000/- 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 a coolie and was earning a sum of Rs.4,000/- per month at the time of accident. The Tribunal fixed a sum of Rs.3,000/- as monthly income of the deceased, which is meagre. The deceased was aged 55 years at the time of accident and the Tribunal has not granted any enhancement towards future prospects. The Tribunal failed to grant any amount towards loss of estate. The amounts awarded by the Tribunal under different heads are meager and prayed for enhancement of compensation.

6. Per contra, Mr.S.Arunkumar, learned counsel appearing for the second respondent-Insurance Company contended that the appellants have not let in any material evidence to prove the avocation and income of the deceased. In the absence of material evidence, the Tribunal rightly fixed a sum of Rs.3,000/- as monthly income and granted compensation towards loss of dependency, which is not meager. The appellants are not entitled to any enhancement towards future prospects and the amounts awarded by the Tribunal under other heads are not meager and prayed for dismissal of the appeal.

7. Heard the learned counsel appearing for the appellants as well as 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 have contended that the deceased was aged 45 years at the time of accident. However, the death certificate/Ex.R1 reveals that the deceased was aged 55 years. Hence, the Tribunal fixed the age of the deceased as 55 years, which is proper. The appellants contended that the deceased was a coolie and was earning a sum of Rs.4,000/- per month. Except oral evidence, they have not produced any material evidence to prove the same. In the absence of material evidence to prove the avocation and income of the deceased, the Tribunal fixed a sum of Rs.3,000/- as monthly income of the deceased. The accident occurred in the year 2006 and the monthly income of the deceased fixed by the Tribunal is meager. Therefore, a sum of Rs.4,500/- is fixed by this Court as monthly income of the deceased. The deceased was aged 55 years and the Tribunal has not granted any enhancement towards future prospects of the deceased. The appellants are entitled to 10% enhancement towards future prospects. Applying multiplier '11' and deducting 1/3rd towards

the personal expenses of the deceased, the amount awarded by the Tribunal towards loss of dependency is modified to Rs.4,35,600/- [Rs.4,500/- + Rs.450/- (10% of Rs.4,500/-) x 12 X 11 x 2/3].

9.From the award of the Tribunal, it is seen that a sum of Rs.2,000/- is awarded towards funeral expenses, which is meager and the same is hereby enhanced to Rs.15,000/-. A meager sum of Rs.5,000/- each to the appellants awarded by the Tribunal towards loss of love and affection is hereby modified. The appellants are together entitled to a sum of Rs.40,000/- towards loss of love and affection. The amounts awarded by the Tribunal towards transportation and damage to clothes are reasonable and they are hereby confirmed by this Court. 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	3,96,000/-	4,35,600/-	Enhanced
2.	Loss of love and affection	10,000/-	40,000/-	Enhanced
3.	Funeral expenses	2,000/-	15,000/-	Enhanced
4.	Transportation	500/-	500/-	Confirmed
5.	Damage to clothes	500/-	500/-	Confirmed
	Total	Rs.4,09,000/-	Rs.4,91,600/-	enhanced by Rs.82,600/-

10.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.4,09,000/- is hereby enhanced to Rs.4,91,600/- 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 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 to the credit of M.C.O.P.No.594 of 2006 on the file of the Motor Accident Claims Tribunal, District Court, Thiruvannamalai. On such deposit, the first appellant is permitted to withdraw his 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. The share of the minor second appellant is directed to be deposited in any one of the Nationalized Bank, till he

attains majority. On such deposit, the first appellant, being the brother of the minor second appellant is permitted to withdraw the accrued interest once in three months, for the welfare of the minor second appellant. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

krk
To

1.The District Judge,
Motor Accident Claims Tribunal,
Thiruvannamalai.

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

+1cc to Mr.F.Terry Chella Raja , Advocate SR.No. 101002
+1cc to Mr.S.Arunkumar , Advocate SR.No. 100822

A.SK(03/08/2020)

C.M.A.No.2776 of 2015

सत्यमेव जयते
WEB COPY