

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.286 of 2015

1.Datchayini
2.Venkatesan
3.Prabakaran

.. Appellants/Petitioners

Vs.

1.G.Murugavel

2.ICICI Lombard General Insurance Company Limited,
No.84, 85, Waltax Road,
Chennai - 600 003.

.. Respondents

(R1 remained exparte before Tribunal. Hence his presence may be dispensed with)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 22.08.2014 made in M.A.C.T.O.P.No.3627 of 2010 on the file of Motor Accidents Claims Tribunal, IV Small Causes Court, Chennai.

For Appellants: Mr.F.Terry Chella Raja
for Mr.V.Velu

For R2 : Mrs.R.Srree Vidhya
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 22.08.2014 made in M.C.O.P.No.3627 of 2010 on the file of Motor Accidents Claims Tribunal, IV Small Causes Court, Chennai.

2.The appellants are the claimants in M.C.O.P.No.3627 of 2010 on the file of Motor Accidents Claims Tribunal, IV Small Causes Court, Chennai. They filed the above said claim petition claiming a sum of Rs.10,00,000/- as compensation for the death of one Seshan, who died in the accident that took place on 13.08.2010.

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 lorry belonging to the first respondent and directed the second respondent-Insurance Company, being the insurer of the vehicle to pay a sum of Rs.7,88,000/- as compensation to the appellants/claimants.

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 painter earning a sum of Rs.500/- per day. The Tribunal erroneously fixed a sum of Rs.6,000/- as notional monthly income of the deceased, which is meagre. The multiplier adopted by the Tribunal is not proper. The Tribunal has not granted any enhancement towards future prospects. The Tribunal failed to grant any amount towards loss of estate, mental agony, transportation and damage to clothes. The amounts awarded by the Tribunal under different heads are meager and prayed for enhancement of compensation.

6.Per contra, Mrs.R.Srree Vidhya, learned counsel appearing for the second respondent-Insurance Company contended that the appellants have not produced any material evidence to prove that the deceased was earning a sum of Rs.500/- per day. In the absence of any material evidence, the notional monthly income fixed by the Tribunal at Rs.6,000/- is excessive. The Tribunal has awarded excessive compensation towards loss of consortium and loss of love and affection. Hence the appellants are not entitled to any enhancement towards future prospects. The compensation awarded by the Tribunal is 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 claimed that deceased was a painter earning a sum of Rs.500/- per day. Except oral evidence, no other material evidence was let in by the appellants to prove the avocation and income of the deceased. In the absence of material evidence to prove the avocation and income, the Tribunal fixed a sum of Rs.6,000/- as notional monthly income of the deceased. Considering the year of accident, the notional monthly income fixed by the Tribunal is not meager. The appellants in the claim petition have stated that the deceased was aged 50 years at the time of accident. As per the Postmortem Report/Ex.P2, the age of the deceased is mentioned as 55. Hence, the Tribunal rightly adopted multiplier '11' and after deducting 1/3rd towards

personal expenses of the deceased, awarded a sum of Rs.5,28,000/- towards loss of income, which is not meager. The Tribunal has awarded excess amount of Rs.1,50,000/- towards loss of consortium and Rs.1,00,000/- towards loss of love and affection to the appellants 2 and 3. In view of the above, the appellants are not entitled for any enhancement. Hence, the award passed by the Tribunal is hereby confirmed.

9.In the result, this Civil Miscellaneous Appeal is dismissed and a sum of Rs.7,88,000/- awarded by the Tribunal as compensation to the appellants, along with interest and costs is hereby confirmed. The second respondent-Insurance Company is 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.3627 of 2010 on the file of Motor Accidents Claims Tribunal, IV Small Causes Court, Chennai. On such deposit, the appellants are permitted to withdraw their respective share of the award amount, as per the ratio of apportionment fixed by the Tribunal, along with proportionate interest and costs, after adjusting the amount already withdrawn, if any, by making necessary applications before the Tribunal. No costs.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

krk

To

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

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

+1cc to Mr.V.Velu, Advocate, S.R.No. 101484

+1cc to Mr.R.Sreevidhya, Advocate, S.R.No. 101753

C.M.A.No.286 of 2015

KK(CO)
GN(28/08/2020)