IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 17.12.2019
CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No. 1690 of 2016

1.D. Lalitha

2.D. Thamarai (Minor)
(2nd appellant rep. By her mother and natural guardian, 1st appellant)

3.V. Rani

4.V. Velappan
5.V. Sujatha .. Appellants/Petitioners

Vs.

1.Y. Ramamurthy Raju

2.The United India Insurance Co. Ltd.,
Office at No. 134, Greams Road,
Silingi Building,
IV Floor, HUB,
Chennai 600 006. .. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 29.07.2011, made in M.C.O.P.No. 881 of 2008, on the file of the Principal District Court, (Motor Accident Claims Tribunal), Thiruvallur.

For Appellants : M/s. Anand and Suryas
For Respondents : Mr. D. Bhaskaran (for R2)
R1- Exparte

JUDGMENT

This appeal has been filed seeking enhancement of the compensation granted by the award dated 29.07.2011, made in M.C.O.P.No. 881 of 2008, on the file of the Principal District Court, (Motor Accident Claims Tribunal), Thiruvallur.

2.The appellants-claimants filed M.C.O.P.No. 881 of 2008, on the file of the Principal District Court, (Motor Accident Claims Tribunal), Thiruvallur, claiming a sum of Rs.17,00,000/- (amended as per order of this Court dated 04.06.2015 made in M.P. No. 1 of 2015 in C.M.A. SR. No. 32650 of 2015) as compensation for the death of one V. Damodharan @ Damu, who died in the accident that took place on 12.07.2008.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the 1st respondent, driver-cum-owner of the car and directed the 2nd respondent as insurer of the vehicle to pay a sum of Rs.4,80,000/- as compensation to the appellants.

4.Not being satisfied with the amounts awarded by the Tribunal in the award dated 29.07.2011, made in M.C.O.P.No. 881 of 2008, the appellants have come out with the present appeal.

5.Learned counsel appearing for the appellants contended that the the deceased was working as Mason and earning a sum of Rs.300/- per day. The Tribunal fixing a meagre sum of Rs.3,000/- per month as the notional income of the deceased and after deducting 1/3rd towards personal expenses of the deceased and applying the multiplier '18', granted compensation towards pecuniary loss. The deceased was aged 25 years at the time of accident. The Tribunal has not granted any enhancement towards future prospects. In any event, the amounts granted by the Tribunal under different heads are also meagre and prayed for enhancement of the same.

6.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal, in the absence of any evidence to prove the avocation and income of the deceased, rightly fixed monthly income at Rs.3,000/- and applied the multiplier and granted just compensation towards pecuniary loss. The appellants have not made out any case for enhancement of the compensation and prayed for dismissal of the of the appeal.

7.Heard the learned counsel appearing for the appellants as well as the 2nd respondent and perused the materials available on record.

8.From the materials on record, it is seen that the appellants have contended that the deceased was a Mason, aged 25 years and was earning a sum of Rs.300/- per day. The appellants failed to prove the said contention. In the absence of any material evidence to prove the avocation and income of the deceased, the Tribunal fixed the notional income of the deceased at Rs.3,000/- per month. The accident is of the year 2008. The notional income fixed by the Tribunal is meagre. Considering the age of the deceased and the fact that he would have had opportunity to earn more in the future, it would be appropriate to fix the notional income of the deceased at Rs.7,500/- per month. The Tribunal has not granted any enhancement towards future prospects of the deceased. The appellants are entitled to 40% enhancement towards future prospectus. The Tribunal has erroneously deducted 1/3rd towards personal expenses of the deceased. There are five dependents of the deceased, hence, 1/4th has to be deducted towards personal expenses. Hence, applying the multiplier '18' and after deducting 1/4th towards personal expenses of the deceased, the compensation awarded by the Tribunal towards pecuniary loss is modified to Rs.17,01,000/- {[Rs.7,500/- + Rs.3,000/- (40% of Rs.7,500/-)] x 12 x 18 x 3/4}. The Tribunal has awarded meagre amount towards loss of consortium to the 1st appellant. The 1st appellant, being wife of the deceased is entitled to a sum of Rs.40,000/- towards loss of consortium. The sum of Rs.5,000/- granted by the

Tribunal under the head, funeral expense is meagre and the same is enhanced to Rs.15,000/-. The Tribunal has not awarded any amount towards loss of estate. The appellants are entitled to a sum of Rs.15,000/- towards loss of estate. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are confirmed.

9.It is well settled that the Tribunal and the Courts have to award just compensation. Though the claimants have claimed lesser compensation, the Courts have power to grant just compensation more than the amount claimed by the claimants. 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.	Pecuniary loss	4,32,000/-	17,01,000/-	enhanced
2.	Loss of love and affection	23,000/-	23,000/-	confirmed
3.	Funeral expenses	5,000/-	15,000/-	enhanced
4.	Loss of consortium to the 1st appellant	20,000/-	40,000/-	enhanced
5.	Loss of estate	-	15,000/-	granted
	Total	4,80,000/-	17,94,000/-	Enhanced by Rs.13,14,000/-

10.In the result, the appeal is allowed and the amount awarded by the Tribunal at Rs.4,80,000/- is enhanced to Rs.17,94,000/- along with interest and costs. The 2nd respondent Insurance Company is directed to deposit the enhanced award amount along with interest and costs, 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. 881 of 2008. On such deposit, the appellants 1, 3 to 5/claimants 1, 3 to 5 are permitted to withdraw their shares of the award amount with proportionate interest and costs, as per the ratio of apportionment fixed by the Tribunal, after adjusting the amount, if any, already withdrawn, by filling necessary applications before the Tribunal. The share of the minor 2nd appellant is directed to be deposited in any one of the Nationalized Bank, till the minor attains majority. The 1st appellant, mother of the minor 2nd appellant is permitted to withdraw the accrued interest, once in three months for the welfare of the minor 2nd appellant. The appellants are directed to pay the court fee, if any, on the enhanced amount of Rs.13,14,000/-. No costs.

Sd/-
Assistant Registrar (CCC)

/True Copy/

Sub Assistant Registrar

To

The Principal District Judge,
(Motor Accident Claims Tribunal),
Thiruvallur.

Copy to : The Section Officer,
V.R Section, High Court, Madras.

+1cc to M/s.Anand and Suryas, Advocate SR.No.104986
+1cc to M/s.D.Bhaskaran, Advocate Sr.No.104835

AKM/10.03.21 /4P-5C/

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