

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No. 1818 of 2016

1.S. Usha Kumari

2.S. Saranya

3.S. Bavani Amma

... Appellants/Petitioners

Vs.

1.G. Periyasamy

2.M/s. Reliance General Insurance Co. Ltd.,

1st Floor, Bharathi Street, Omalur Main Road,

Swarnapuri, Salem 636 004. ... Respondents/Respondents

(R1 is set exparte before the Tribunal,
hence notice may be dispensed with in this appeal.)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 20.08.2013, made in M.C.O.P.No. 105 of 2012, on the file of the Additional District Court, (Motor Accident Claims Tribunal), Namakal.

For Appellants : Mr. Ma. P. Thangavel

For Respondents: No appearance (for R2)

R1 : Exparte

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J U D G M E N T

This appeal has been filed seeking enhancement of the compensation granted by the award dated 20.08.2013, made in M.C.O.P.No. 105 of 2012, on the file of the Additional District Court, (Motor Accident Claims Tribunal), Namakal.

2.The appellants-claimants filed M.C.O.P.No. 105 of 2012, on the file of the Additional District Court, (Motor Accident Claims Tribunal), Namakal, claiming a sum of Rs.30,00,000/- (amended as per the order of this Court dated 12.10.2015 made in M.P. No. 1 of 2015 in C.M.A. SR. No. 62342 of 2015) as compensation for the death of one S. Sasidharan Pillai, who died in the accident that took place on 15.10.2011.

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 lorry belonging to the 1st respondent and directed the 2nd respondent as insurer of the vehicle to pay a sum of Rs.20,00,000/- as compensation to the appellants.

4.Not being satisfied with the amounts awarded by the Tribunal in the award dated 20.08.2013, made in M.C.O.P.No. 105 of 2012, the appellants have come out with the present appeal.

5.Learned counsel appearing for the appellants contended that the deceased was working as Painting Contractor and was earning a sum of Rs.30,000/- per month. To substantiate the same, they have also marked the Income Tax Returns as Ex.P16. The Tribunal without considering Ex.P16 and the oral evidence of P.W.4, has fixed a meagre sum of Rs.18,000/- per month as the income. The deceased was aged 48 years at the time of accident. The Tribunal has not granted any enhancement towards future prospects. The Tribunal ought to have granted 30% enhancement towards future prospects. The amounts granted by the Tribunal under different heads are meagre and prayed for enhancement of the compensation.

7.Heard learned counsel appearing for the appellants and perused the materials available on record. Though notice has been served on the 2nd respondent and their name is printed in the cause-list, there is no representation for them either in person or through counsel.

8.From the materials on record it is seen that the appellants contended that the deceased was Painting Contractor and was earning a sum of Rs.30,000/- per month. The 1st appellant, wife of the deceased as P.W.4 has deposed to that effect. The Tribunal taking into consideration Ex.P16- Income Tax Returns for the year 2009 - 2010, fixed the monthly income of the deceased at Rs.18,000/-, which is proper. It is evident from Ex.P12- post mortem report, the deceased was aged 48 years at the time of accident. The Tribunal erred in not granting any enhancement towards prospects. The appellants are entitled to 25% enhancement towards future prospects. There are three

dependents of the deceased. Hence, deducting $1/3^{\text{rd}}$ towards personal expenses of the deceased and applying the multiplier '13', the amount granted by the Tribunal towards loss of dependency is modified to Rs.23,40,000/- {[Rs.18,000/- + Rs.4,500/- (25% of Rs.18,000/-)] x 12 x 13 x $2/3$ }. The Tribunal has awarded excess amount of Rs.50,000/- towards loss of consortium to the 1st appellant, wife of the deceased. The 1st appellant is entitled to only a sum of Rs.40,000/- towards loss of consortium. The amounts awarded by the Tribunal towards funeral expenses is meagre. The appellants are entitled to a sum of Rs.15,000/- towards funeral expenses. 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, they are 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	18,72,000/-	23,40,000/-	Enhanced
2.	Loss of consortium to the 1 st appellant	50,000/-	40,000/-	Reduced
3.	Loss of love and affection to the appellants 2 and 3	45,000/-	45,000/-	Confirmed
4.	Funeral expenses	10,000/-	15,000/-	Enhanced
5.	Loss of estate	-	15,000/-	Granted
6.	Medical expenses	23,015/-	23,015/-	Confirmed
	Total	20,00,015/-	24,78,015/-	
	Rounded off to	20,00,000/-	24,78,000/-	Enhanced by Rs.4,78,000/-

9. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.20,00,000/- is enhanced to Rs.24,78,000/- 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. 105 of 2012. On such deposit, the appellants are permitted to withdraw their shares of the award amount, along with proportionate interest and costs, as per the ratio of apportionment fixed by the Tribunal, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The appellants are directed to pay the court fee, if any, on the enhanced amount of Rs.4,78,000/-. It is made clear that the appellants are not entitled for any interest for the delay period on the amount of Rs.4,78,000/-, enhanced by this Court as per the order of this Court dated 16.08.2016, made in M.P. No. 3 of 2015 in C.M.A. SR. No. 62342 of 2015. No costs.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

gsa

To

The Additional District Judge,
(Motor Accident Claims Tribunal),
Namakal.

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

+1cc to Mr. Ma. P. Thangavel, Advocate SR.No.105075

सत्यमेव जयते

C.M.A.No. 1818 of 2016

SR(CO)
GMY(18/02/2020)

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