

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No. 1845 of 2016

Selvi .. Appellant/1st Petitioner
Vs.

1.V.R. Vasu 1st Respondent/1st Respondent

2.Reliance General Insurance Co. Ltd.,
TP Claims,
Office at 23, Sour Tank Road,
Heavitree Unit 1, 3rd Floor,
Chetpet, Chennai 600 031. 2nd Respondent/2nd Respondent

3.Ganesh 3rd Respondent/2nd Petitioner

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 27.09.2013, made in M.C.O.P.No. 448 of 2008, on the file of the IV Additional District Court, (Motor Accident Claims Tribunal), Ponneri.

For Appellant : Mr. P. Premkumar
For Respondents: No appearance (for R2)
R1- Exparte
R3-Notready in notice

J U D G M E N T

This appeal has been filed seeking enhancement of the compensation granted by the award dated 27.09.2013, made in M.C.O.P.No. 448 of 2008, on the file of the IV Additional District Court, (Motor Accident Claims Tribunal), Ponneri.

2.The appellant and 3rd respondent who are the claimants filed M.C.O.P.No. 448 of 2008, on the file of the IV Additional District Court, (Motor Accident Claims Tribunal), Ponneri, claiming a sum of Rs.5,00,000/- as compensation for the death of one Prabhakaran, who died in the accident that took place on 22.02.2008.

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.1,95,000/- as compensation to the appellant/1st claimant at the first instance and recover the same from the 1st respondent. The Tribunal dismissed the claim petition as against the 3rd respondent/2nd claimant.

4. Not being satisfied with the amounts awarded by the Tribunal in the award dated 27.09.2013, made in M.C.O.P.No. 448 of 2008, the appellant/1st claimant has come out with the present appeal.

5. Learned counsel appearing for the appellant contended that the deceased was working as Driver and earning a sum of Rs.10,000/- per month. The Tribunal fixed a meagre sum of Rs.15,000/- per annum and granted compensation towards loss of dependency by applying the multiplier '18'. The deceased was aged 22 years at the time of accident. The Tribunal has not awarded any enhancement towards future prospects and damages to clothes. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of the compensation.

6. Heard learned counsel appearing for the appellant 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.

7. It is the contention of the appellant that the deceased was aged 22 years and working as Driver and was earning a sum of Rs.10,000/- per month at the time of accident. The appellant failed to produce any document to prove the avocation and income of the deceased. 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.15,000/- per annum. The accident is of the year 2008. The annual income fixed by the Tribunal is meagre. Considering the avocation of the appellant, a sum of Rs.6,000/- per month is fixed as the notional income of the deceased. As per Ex.P3, the deceased was aged 18 years at the time of accident. The Tribunal erred in not awarding any enhancement towards future prospects. The appellants are entitled to 40% enhancement towards future prospects. The deceased was bachelor at the time of accident. The Tribunal erroneously deducted 1/3rd towards the personal expenses of the deceased, instead of deducting 1/2. Hence, after deducting 50% towards personal expenses of the deceased and applying the multiplier '18', the amount awarded by the Tribunal towards loss of dependency is modified to Rs.9,07,200/- $\{ [Rs.6,000/- + Rs.2,400/- (40\% \text{ of } Rs.6,000/-)] \times 12 \times 18 \times 1/2 \}$. The Tribunal has awarded meagre amounts towards loss of love and affection and funeral expenses. The appellant is entitled to a

sum of Rs.40,000/- towards loss of love and affection and Rs.15,000/- towards funeral expenses. The Tribunal has not awarded any amount towards loss of estate. The appellant is entitled to a sum of Rs.15,000/- towards loss of estate.

8.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.	Funeral expenses	5,000/-	15,000/-	Enhanced
2.	Loss of love and affection	10,000/-	40,000/-	Enhanced
3.	Loss of dependency	1,80,000/-	9,07,000/-	Enhanced
4.	Loss of estate	-	15,000/-	Granted
	Total	1,95,000/-	9,77,000/-	Enhanced by Rs.7,82,000/-

9.In the result, the appeal is allowed and the amount awarded by the Tribunal at Rs.1,95,000/- is enhanced to Rs.9,77,000/- 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. 448 of 2008, at the first instance and recover the same from the 1st respondent, owner of the lorry. The appeal is dismissed as against the 3rd respondent. On such deposit, the appellant is permitted to withdraw the award amount, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The appellant is directed to pay the court fee, if any, on the enhanced amount of Rs.7,82,000/-. No costs.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The IV Additional District Judge,
(Motor Accident Claims Tribunal),
Ponneri.

2.The Section Officer,
V.R Section,
High Court, Madras.

+1cc to Mr.P.Premkumar, Advocate, S.R.No. 104935

C.M.A.No. 1845 of 2016

PM(CO)
GN(09/10/2020)



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