

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.4689 OF 2019

1.Shakila Banu
2.K.Ashifa (minor)
minor rep. by her mother and
next friend, Shakila Banu
3.M.A.Amanulla
4.Sulaika Beevi ... Appellants/Petitioners

Vs.

1.M/s.YBM Travels,
No.6, 3rd Cross, Pudu Nagar,
Reddiyarpalayam, Puducherry - 605 010.
2.The New India Assurance Co. Ltd.,
(Motor Third Party Cell)
Bombay Mutual Building, 6th Floor,
No.232, N.S.C. Bose Road, Chennai - 01.
.. Respondents/Respondents

Prayer:

This Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 16.03.2018, made in M.C.O.P.No.370 of 2017, on the file of the Special Sub Court No.2, Small Causes Court, (Motor Accident Claims Tribunal), Chennai.

For Appellants : Mr.K.Varadha Kamaraj

For R2 : Mr.J.Chandran

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellants/claimants seeking enhancement of the award dated 16.03.2018, made in M.C.O.P.No.370 of 2017, on the file of the Special Sub Court No.2, Small Causes Court, (Motor Accident Claims Tribunal), Chennai.

2.The appellants filed M.C.O.P.No.370 of 2017, on the file of the Special Sub Court No.2, Small Causes Court, (Motor Accident Claims Tribunal), Chennai, claiming a sum of Rs.45,00,000/- as compensation for the death of one Kaja Basheer who died in the accident that took place on 04.12.2016.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident has occurred due to rash and negligent driving by the driver of the bus belonging to the 1st respondent and directed the 2nd respondent/Insurance Company to pay a sum of Rs.29,26,000/- as compensation to the appellants.

4.Not being satisfied with the amounts awarded by the Tribunal, the appellants have come out with the present appeal seeking enhancement of compensation.

5.Though the learned counsel appearing for the appellants have raised various grounds for enhancement of compensation, at the time of arguments, he restricted his claim with regard to deduction towards personal expenses, enhancement for future prospects and compensation for loss of love and affection.

6.The learned counsel appearing for the appellants contended that there are four dependants of the deceased and the Tribunal ought to have deducted 1/3rd instead of 1/4th towards personal expenses of the deceased. The deceased was aged 38 years at the time of accident and the Tribunal has not granted any enhancement towards future prospects. The Tribunal has not awarded any amount towards loss of love and affection and prayed for enhancement of compensation.

7.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the appellants have stated in the claim petition that the deceased was working as a site supervisor in M/s.Ilyas Constructions, Chennai and was earning a sum of Rs.20,000/- per month. The Tribunal accepted the Ex.P9/salary certificate produced by the appellants and fixed the monthly income of the deceased at Rs.17,000/- and granted compensation under different heads which are not meagre and prayed for dismissal of the appeal.

8.Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the 2nd respondent/Insurance Company and perused all the materials available on record.

9.It is the contention of the appellants that the deceased was working as a site supervisor in M/s.Ilyas Constructions, Chennai and was earning a sum of Rs.20,000/- per month. They

examined PW3 and marked Ex.P9 to prove the said contention. The 2nd respondent/Insurance Company have not let in any evidence to disprove the evidence of PW3 and Ex.P9. The Tribunal considering the above materials rightly fixed monthly income of the deceased at Rs.17,000/-. As per passport, the deceased was aged 38 years at the time of the accident. The appellants are entitled to 40% enhancement towards future prospects. There are four dependents depending on the deceased, the Tribunal erroneously deducted 1/3rd instead of deducting 1/4th towards personal expenses of the deceased. Thus, the amount awarded by the Tribunal for loss of dependency is modified to Rs.32,13,000/- [(Rs.17,000/- + Rs.6,800/- (Rs.17,000/- of 40%) x 12 x 15 x 3/4)]. The 2nd appellant is minor daughter and appellants 3 & 4 are parents of the deceased. The Tribunal has not awarded any amount towards loss of love & affection. A sum of Rs.50,000/- is granted towards loss of love & affection to the appellants 2 to 4. The amounts granted by the Tribunal under other heads are just and reasonable and hence they are hereby 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 Pecuniary Benefits	28,56,000	32,13,000	Enhanced
2.	Loss of consortium	40,000	40,000	Confirmed
3.	Loss of estate	15,000	15,000	Confirmed
4.	Funeral expenses	15,000	15,000	Confirmed
5.	Loss of love and affection to the appellants 2 to 4	-	50,000	Granted
	Total	Rs.29,26,000/-	Rs.33,33,000/-	Enhanced by Rs.4,07,000/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.29,26,000/- is hereby enhanced to Rs.33,33,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellants/claimants are

directed to pay necessary Court fee, if any, on the enhanced compensation. The 2nd respondent/Insurance Company is 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. On such deposit, the appellants 1, 3 & 4 are permitted to withdraw their respective share from the enhanced award amount on the basis of apportionment fixed by the Tribunal along with proportionate interest and costs, less the amount if any, already withdrawn. The share of the minor 2nd appellant is directed to be deposited in any one of the Nationalised Bank till she attains majority. The 1st appellant being the mother of the 2nd appellant is permitted to withdraw the accrued interest once in three months for the welfare of the minor. No costs.

Sd/-

Assistant Registrar(CS III-MDU)

//True Copy//

Sub Assistant Registrar

mtl

To

1. The Special Subordinate Judge - 2,
Motor Accident Claims Tribunal,
Small Causes Court,
Chennai.

+lcc to Mr.K.Varadha Kamaraj, Advocate, S.R.No.104730

+lcc to Mr.J.Chandran, Advocate, S.R.No.104992

C.M.A.No.4689 of 2019

NMI (CO)
CS/03/08/2020

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