



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.923 of 2015

1.J.Latha Bai
2.J.Vijayan
3.J.Uma Shalini
4.Minor.J.Naresh Babu .. Appellants/Petitioners
(Minor fourth appellant represented by his mother and next friend J.Latha Bai, first appellant herein)

Vs.

1.N.Krishnamma
2.The Oriental Insurance Company Limited,
No.8, Esplanade, Chennai - 600 108. .. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 26.02.2013 made in M.C.O.P.No.189 of 2009 on the file of the Motor Accident Claims Tribunal, Chief Small Causes Court, Chennai.

For Appellants : Ms.Ramya V.Rao
For R2 : Mr.K.Vinod
for Ms.Elveera Ravindran

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 26.02.2013 made in M.C.O.P.No.189 of 2009 on the file of the Motor Accident Claims Tribunal, Chief Small Causes Court, Chennai.

2.The appellants are the claimants in M.C.O.P.No.189 of 2009 on the file of the Motor Accident Claims Tribunal, Chief 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 M.D.Jagannathan Rao, who died in the accident that took place on 11.08.2008.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the rider of the motorcycle belonging to the first respondent and directed the second respondent-Insurance Company, as the insurer of the motorcycle to pay a sum of Rs.6,46,000/- as compensation to the appellants.

4.Not being satisfied with the amount awarded by the Tribunal, the appellants have come out with the present appeal.

5.The learned counsel appearing for the appellants contended that at the time of accident, the deceased was the proprietor of Latha Bai Turning Works, Chintadripet, Chennai and was earning a sum of Rs.20,000/- per month. The deceased was the only bread winner of the family and the Tribunal erroneously fixed a sum of Rs.6,000/- as monthly income of the deceased, which is meagre. The deceased was aged 50 years at the time of accident and the Tribunal has not granted any enhancement towards future prospects. The amount awarded by the Tribunal towards funeral expenses and loss of consortium are meagre. The Tribunal failed to grant any amount towards loss of estate and prayed for enhancement of compensation.

6.Per contra, Mr.K.Vinod, learned counsel appearing for the second respondent-Insurance Company contended that the appellants have not produced any document to prove the avocation and income of the deceased. In the absence of any material to prove the avocation and income, the Tribunal considering the age of the deceased and year of accident has rightly fixed a sum of Rs.6,000/- as monthly income of the deceased and granted compensation towards pecuniary loss, which is not meagre. The amounts awarded by the Tribunal under different heads are not meagre. The appellants are not entitled to any enhancement 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 contended that the deceased was the proprietor of Latha Bai Turning Works, Chintadripet, Chennai and was earning a sum of Rs.20,000/- per month at the time of accident. Except oral evidence, the appellants have not produced any document to prove the avocation and income of the deceased.



In the absence of document to prove the avocation and income of the deceased, the Tribunal fixed a sum of Rs.6,000/- per month as notional income of the deceased. The accident occurred in the year 2008 and the notional income of the deceased fixed by the Tribunal is meagre. Therefore, considering the age of the deceased and the year of accident, a sum of Rs.6,500/- per month is fixed as notional income of the deceased. The claimants in the claim petition have contended that the deceased was aged 50 years at the time of accident. Whereas in Exs.P3 and P5, postmortem certificate and death certificate, the age of the deceased was mentioned as 53 years. Hence, the Tribunal fixed the age of the deceased as 53 years, which is proper. The Tribunal has not granted any enhancement towards future prospects. The appellants are entitled to 10% enhancement towards future prospects. Thus, the amount awarded by the Tribunal towards pecuniary loss is modified to Rs.7,07,850/- [Rs.6,500/- + Rs.650/- (10% of Rs.6,500/-) x 12 X 11 x 3/4].

9.From the award of the Tribunal it is seen that the amounts awarded by the Tribunal towards funeral expenses and loss of consortium are meagre and the same are enhanced to Rs.15,000/- and Rs.40,000/- respectively. A sum of Rs.10,000/- each awarded by the Tribunal towards loss of love and affection to the appellants 2 to 4 is meagre and the same is enhanced of Rs.20,000/- each. The Tribunal has not granted any amount towards loss of estate. Therefore, a sum of Rs.15,000/- is granted by this Court towards loss of estate. The compensation awarded by the Tribunal towards medical expenses is confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:



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S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Pecuniary loss	5,94,000/-	7,07,850/-	Enhanced
2.	Funeral expenses	10,000/-	15,000/-	Enhanced
3.	Loss of consortium	10,000/-	40,000/-	Enhanced
4.	Loss of love and affection	30,000/-	60,000/-	Enhanced
5.	Medical expenses	2,000/-	2,000/-	Confirmed
6.	Loss of estate	-	15,000/-	Granted
	Total	Rs.6,46,000/-	Rs.8,39,850/-	enhanced by Rs.1,93,850/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.6,46,000/- is hereby enhanced to Rs.8,39,850/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The second 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 to the credit of M.C.O.P.No.189 of 2009 on the file of the Motor Accident Claims Tribunal, Chief Small Causes Court, Chennai. On such deposit, the appellants 1 to 3 are permitted to withdraw their respective share of the enhanced award amount now determined by this Court, as per the ratio of apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. The share of the minor fourth appellant is directed to be deposited in any one of the Nationalized Bank, till he attains majority. On such deposit, the first appellant, being the mother of the minor fourth appellant is permitted to withdraw the accrued interest once in three months, for the welfare of the minor fourth appellant. No costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar



To

1.The Chief Judge,
Motor Accident Claims Tribunal,
Small Causes Court,
Chennai.

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

+1 cc to Mrs.Elveera Ravindran Advocate sr102023

+2 ccs to Mrs.A.N.Viswanatha Rao Advocate sr103363

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