IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.03.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2091 of 2016

1.Mallakkal
2.Padmini
3.Muthammal
4.Subramaniyam .. Appellants/Petitioners

Vs.

1.Rajini

2.The New India Assurance Co. Ltd.,
No.12, New Hospital Street,
Gopi Town, Gopi Taluk,
Erode District. .. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 15.02.2016, made in M.C.O.P.No.784 of 2010, on the file of the Sub Court, (Motor Accident Claims Tribunal), Sathyamangalam.

For Appellants : Mr.K.Myilsamy for Mr.M.Easan

For R2 : No appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellants/claimants seeking enhancement of the compensation granted by the Tribunal in the award dated 15.02.2016, made in M.C.O.P.No.784 of 2010, on the file of the Sub Court, (Motor Accident Claims Tribunal), Sathyamangalam.

2.The appellants/claimants filed M.C.O.P.No.784 of 2010, on the file of the Sub Court, (Motor Accident Claims Tribunal), Sathyamangalam, claiming a sum of Rs.10,00,000/- as compensation for the death of one Devarajan who died in the accident that took place on 11.05.2010.

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 of the tipper lorry and directed the 1st respondent to pay a sum of

Rs.2,84,960/- as compensation to the appellants. The Tribunal dismissed the claim petition against the 2nd respondent.

4.Challenging the portion of the award dismissing the claim petition against the 2nd respondent and for enhancement of compensation, the appellants have come out with the present appeal.

5.The learned counsel appearing for the appellants contended that the Tribunal erred in holding that the appellants have not mentioned the policy number in the claim petition. The appellants have mentioned the policy number and period of policy in column No.2. The 2nd respondent did not dispute their liability and did not adduce any evidence. The appellants have let in evidence and proved their case. Before the death, the deceased was working as an Inspector in Tamil Nadu Electricity Board and at the time of his death he was receiving pension and after the retirement, the deceased was doing agricultural activities and also milk vending business and was earning additional sum of Rs.10,000/- per month. The Tribunal erroneously fixed a meagre sum of Rs.6,000/- per month as the notional monthly income of the deceased and prayed for modifying the award and fix the liability against the second respondent-Insurance Company and enhancement of compensation.

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

7.From the materials on record, it is seen that the Tribunal exonerated the 2nd respondent-Insurance Company on the ground that the appellants have not proved the liability against the 2nd respondent and 2nd respondent is not liable to pay compensation to the appellants and directed the 1st respondent to pay compensation to the appellants. The Tribunal failed to see that the appellants have furnished policy number and the period for which the policy was issued in column No.2 of the claim petition. In column No.16 of the claim petition, the name of the 2nd respondent was mentioned. The 2nd respondent in the counter statement did not deny the claim of the appellants that vehicle was insured with the 2nd respondent and policy was in force at the time of accident. The only contention raised by the 2nd respondent in the counter statement is that the accident has occurred only due to negligence on the part of the deceased and 1st respondent, driver of the lorry was not responsible for the accident. The Tribunal without properly appreciating the averments in the pleadings and evidence let in by the appellants and failure on the part of the respondents to let in evidence, erroneously exonerated the 2nd respondent-Insurance Company. In view of the contention of the appellants and the particulars of insurance policy is mentioned in the claim petition and that no evidence was let in by the 2nd respondent-Insurance Company to deny the insurance policy, the award of the Tribunal directing the 1st respondent to pay compensation holding that the 2nd respondent is not liable to pay compensation is modified, directing the 2nd respondent to pay compensation awarded.

8.As far as the quantum of compensation is concerned, the appellants have contended that the deceased had worked as an Inspector in Tamil Nadu Electricity Board and was receiving pension of Rs.10,000/- per month and a sum of Rs.10,000/- per month from agricultural income. They have failed to substantiate their contention. In the absence of material evidence, the Tribunal fixed a sum of Rs.6,000/- as the monthly income of the deceased. The accident is of the year 2010. The amounts fixed by the Tribunal is meagre. Hence, a sum of Rs.7,500/- is fixed as a monthly income of the deceased. There are four claimants. Deducting 1/4th towards the personal expenses of the deceased, the amounts granted by the Tribunal towards loss of dependency is modified to Rs.4,72,500/- [Rs.7,500/- x 12 x 7 x ¾]. The Tribunal has granted excess amounts towards loss of consortium and funeral expenses. The same are hence reduced to Rs.40,000/- and Rs.15,000/- respectively. The Tribunal failed to grant any amount towards loss of estate. Hence, a sum of Rs.15,000/- is granted towards loss of estate. 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 dependency	1,26,000/-	4,72,500/-	enhanced
2.	Loss of consortium	50,000/-	40,000/-	Reduced
3.	Medical expenses	23,960/-	23,960/-	Confirmed
4.	Loss of love and affection	60,000/-	60,000/-	Confirmed
5.	Funeral expenses	25,000/-	15,000/-	Reduced

6.	Loss of estate	-	15,000/-	Granted
	Total	2,84,960/-	6,26,460/-	Enhanced by Rs.3,41,500/-

11.In the result, the appeal is allowed and award granted by the Tribunal at Rs.2,84,960/- is enhanced to Rs.6,26,460/- 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.784 of 2010. On such deposit, the appellants/claimants are permitted to withdraw their share of the enhanced award amount along with interest and costs, as per the ratio of apportionment fixed by the Tribunal, less the amount already withdrawn if any, by filing necessary application before the Tribunal. The 1st respondent is permitted to withdraw the award amount lying in the credit of M.C.O.P.No.784 of 2010, if any already deposited. The appellants are directed to pay the necessary Court fee, if any, for the enhanced award amount now determined by this Court. No costs.

Sd/-
Assistant Registrar(CS-VI)

//True copy//

Sub Assistant Registrar

gsa

To

1.The Subordinate Judge,
(Motor Accident Claims Tribunal),
Sathyamangalam.

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

+1cc to Mr.VA.VU.SI.Vazhakagam, Advocate SR.No.29381

C.M.A.No.2091 of 2016

BR(CO)
GMY(04/11/2019)