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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2544 of 2016

1.Saraniya

2.Minor Brindha
(Minor 2nd appellant rep. by her
natural guardian and mother
1st appellant)

3.Mallika

4.Varadhan .. Appellants/Petitioners

Vs.

1.Subbarayudu

2.Cholamandalam MS General Insurance
Co. Ltd., "DARE HOUSE"
2nd floor, New No.2, Old No.234
N.S.C.Bose road, Chennai-600 001. .. Respondents/Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 08.12.2015 made in M.C.O.P.No.235 of 2010 on the file of Motor Accident Claims Tribunal, IV Additional District Court, Thiruvallur @ Ponneri.

For Appellants	:	Ms.A.Subadra for Ms.M.Malar
For R2	:	Mr.E.Rajadurai for Mr.N.Vijayaraghavan
R1	:	Exparte



J U D G M E N T

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 08.12.2015 made in M.C.O.P.No.235 of 2010 on the file of Motor Accident Claims Tribunal, IV Additional District Court, Thiruvallur @ Ponneri.

2.The appellants are claimants in M.C.O.P.No.235 of 2010 on the file of Motor Accident Claims Tribunal, IV Additional District Court, Thiruvallur @ Ponneri. They filed the said claim petition claiming a sum of Rs.21,89,400/- as compensation for the death of one Arul Kumar, who died in the accident that took place on 11.07.2009.

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/Insurance Company being insurer of the said lorry to pay a sum of Rs.10,61,000/- as compensation to the appellants at the first instance and recover the same from the 1st respondent.

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.The learned counsel appearing for the appellants contended that the deceased was aged 32 years at the time of accident, he was working as a driver and was earning a sum of Rs.7,500/- per month. The appellants produced Ex.P4/driving license to prove the same. The Tribunal without considering the same, has fixed a sum of Rs.6,500/- as monthly income of the deceased, which is meagre. The Tribunal has not awarded any enhancement towards future prospects. The multiplier applied by the Tribunal is not correct. The Tribunal has not awarded any amount towards loss of estate, transportation, mental agony and loss of expectation of life. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the appellants have not produced any document to prove that the deceased was earning a sum of Rs.7,500/- per month. In the absence of any material evidence, the Tribunal has rightly fixed the monthly income of the deceased at Rs.6,500/-. The deceased was aged 32 years at the time of accident and the multiplier '16' applied by the

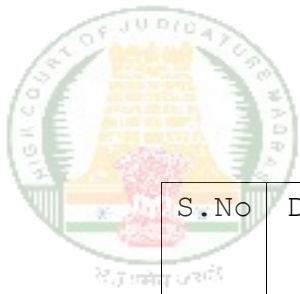


Tribunal is correct. The Tribunal after considering the materials available on record, has awarded just compensation. The appellants have not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

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7. 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.

8. From the materials available on record, it is seen that the appellants have contended that the deceased was working as a driver and was earning a sum of Rs.7,500/- per month and marked Ex.P4/driving license to prove the same. The appellants have not produced any document to prove that the deceased was earning a sum of Rs.7,500/- per month. In the absence of material evidence with regard to income of the deceased, the Tribunal has fixed monthly income of the deceased at Rs.6,500/-. The accident is of the year 2009 and the monthly income fixed by the Tribunal is meagre. Hence, a sum of Rs.7,000/- is fixed as monthly income of the deceased. The deceased was aged 32 years at the time of accident as per Ex.P2/Post-mortem certificate. The Tribunal has applied multiplier 16, which is proper. But the Tribunal has not awarded any enhancement towards future prospects. The appellants are entitled to 40% enhancement towards future prospects. After deducting 1/4th towards personal expenses, loss of income awarded by the Tribunal is modified to Rs.14,11,200/- (Rs.7,000/- + 2800 [Rs.7,000/- X 40%] X 12 X 16 X 3/4). In addition to that, the Tribunal has awarded a sum of Rs.50,000/- & Rs.25,000/- towards loss of consortium and funeral expenses respectively, which are excessive and the same are hereby reduced to Rs.40,000/- & Rs.15,000/- respectively. A sum of Rs.50,000/- awarded by the Tribunal towards loss of love and affection to the 2nd appellant is meagre. Considering that the minor/2nd appellant has lost his father at his tender age, a sum of Rs.75,000/- is awarded towards loss of love and affection to the 2nd appellant. The Tribunal has not awarded any amount towards loss of estate and this Court awards a sum of Rs.15,000/- towards loss of estate. 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 or reduced
1.	Loss of income	9,36,000	14,11,200	Enhanced
2.	Funeral expenses	25,000	15,000	Reduced
3.	Loss of love and affection	50,000	75,000	Enhanced
4.	Loss of consortium	50,000	40,000	Reduced
5.	Loss of estate	-	15,000	Granted
	Total	Rs.10,61,000/-	Rs.15,56,200/-	Enhanced by Rs.4,95,200/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.10,61,000/- is hereby enhanced to Rs.15,56,200/- 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. Out of the enhanced award amount, the 1st appellant being wife of the deceased is entitled to a sum of Rs.5,23,800/-, 2nd appellant being son of the deceased is entitled to a sum of Rs.6,23,800/-, 3rd appellant being mother of the deceased is entitled to a sum of Rs.2,23,800/- and the 4th appellant being father of the deceased is entitled to a sum of Rs.1,84,800/- as 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 at the first instance and recover the same from the 1st respondent. On such deposit, the appellants 1, 3 and 4 are permitted to withdraw their respective share of the award amount now determined by this Court 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 Banks till the minor attains majority. The 1st



appellant being mother of the minor/2nd appellant is permitted to withdraw the accrued interest once in three months for the welfare of the minor. No costs.

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Sd/--
Asst.Registrar

/true copy/
Sub Asst. Registrar

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To

1.The IV Additional District Judge
The Motor Accident Claims Tribunal
Tiruvallur @ Ponneri.

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

+1 cc to Mr.N.Vijayaraghavan Advocate sr106746
+1 cc to Mrs.M.Malar Advocate sr106414

C.M.A.No.2544 of 2016

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