IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.09.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.No.462 of 2016

1.R.Mohan

2.Uma .. Appellants

Vs.

1.N.Loganathan

2.Cholamandalam General Insurance Co. Ltd.,
Dare House, No.2, N.S.C.Bose Road,
2nd Floor, Chennai - 600 001. .. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 01.09.2015 made in M.C.O.P.No.221 of 2011 on the file of the Motor Accident Claims Tribunal, Principal District Court, Villupuram.

For Appellants : Mr.A.V.B.Krishnakanth

For Respondents : No appearance

J U D G M E N T

The Civil Miscellaneous Appeal is filed by the appellants/claimants seeking enhancement of compensation granted by the Tribunal in the award dated 01.09.2015 made in M.C.O.P.No.221 of 2011 on the file of the Motor Accident Claims Tribunal, Principal District Court, Villupuram.

2.The appellants are claimants in M.C.O.P.No.221 of 2011 on the file of the Motor Accident Claims Tribunal, Principal District Court, Villupuram. They filed the said claim petition claiming a sum of Rs.7,00,000/- as compensation for the death of one Padmavathi, who died in the accident that took place on 20.07.2011. 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 tipper lorry belonging to the 1st respondent and directed the 2nd respondent/Insurance Company to pay a sum of Rs.2,46,000/- as compensation to the appellants. Not being satisfied with the amount awarded by the Tribunal, the appellants have come out with the present appeal seeking enhancement of compensation.

3.The learned counsel appearing for the appellants contended that the Tribunal erred in assessing the monthly income of the deceased as Rs.4,000/-. The Tribunal failed to consider the fact that the deceased was running a grocery shop at her village and was earning about Rs.7,000/- per month. The Tribunal has committed an error by deducting the total income of the deceased by 1/2 without any valid basis. The deduction has to be based on the proposition set out by the Hon'ble Supreme Court in Sarala Verma & Ors Vs. Delhi Transport Corporation & Anr. Hence, only deduction of 1/3rd of the total income ought to have been deducted for personal expenses of the deceased. The Tribunal has not awarded any amount towards loss of estate. The demise of the deceased has put the business of grocery shop there was a huge monetary loss to the claimants and this aspect was not considered by the Tribunal. At the time of accident, the deceased was had purchased goods worth Rs.15,000/- for her grocery shop and was waiting in the bus stop, whereas that loss has not been compensated by the Tribunal. Further the Tribunal has awarded a meagre sum towards loss of love & affection, funeral expenses and prayed for enhancement of compensation.

4.Though notice was served on the 2nd respondent/Insurance Company and its name is printed in the cause list, there is no representation on behalf of them either in person or through counsel.

5.The 1st respondent remained ex-parte before the Tribunal and notice to the 1st respondent is dispensed with.

6.Heard the learned counsel appearing for the appellants and perused all the materials available on record.

7.From the materials available on record, it is seen that the appellants have contended that the deceased was running a bunk stall and was earning a sum of Rs.7,000/- per month. The appellants have not filed any documents to prove their contention. The appellants are son and daughter of the deceased and they are not dependents on the income of the deceased. In the absence of any material evidence, the Tribunal has taken a sum of Rs.4,000/- per month as notional income of the deceased. The accident is of the year 2011. The deceased was aged 60 years at the time of accident. The Tribunal has rightly applied multiplier '9' and deducting 1/2 towards personal expenses. The amount granted by the Tribunal towards loss of income is Rs.2,16,000/- (Rs.4,000/- x 12 x 9 x 1/2) which is proper and reasonable and does not require any modification. The sum granted by the Tribunal towards loss of love & affection and funeral expenses are meagre and the same are enhanced to Rs.25,000/- each to the appellants towards loss of love & affection and Rs.15,000/- towards funeral expenses. 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)
1.	Loss of income	Rs.2,16,000/-	Rs.2,16,000/-
2.	Loss of love and affection	Rs.20,000/-	Rs.50,000/-
3.	Funeral expenses	Rs.10,000/-	Rs.15,000/-
	Total	Rs.2,46,000/-	Rs.2,81,000/-

8.In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.2,46,000/- is enhanced to Rs.2,81,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. No costs.

9.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 & 2 are permitted to withdraw their respective share of the award amount on the basis of apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn by filing necessary applications before the Tribunal.

Sd/-
Assistant Registrar(CS-V)

//True copy//

Sub Assistant Registrar

mtl

To
1.The Principal District Judge,
Motor Accident Claims Tribunal,
Villupuram.

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

+1cc to Mr.A.V.B.Krishnakanth, Advocate SR.No.77355

C.M.A.No.462 of 2016

AD(CO)
GMY(06/01/2020)