

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.01.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.687 of 2016

1.Rajamani

2.Thangarasu

3.Kavitha

4.Soundarajan

.. Appellants/Claimants

Vs.

1.Dhanabagyam

(R1 remained exparte and hence notice
may be dispensed with)

2.The Oriental Insurance Co., Ltd.,
Siva Complex, II Floor,
22-C, Sarada College main Road,
Salem.

..Respondents 1 & 2/ Respondents 1 & 2

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 18.06.2015 made in M.C.O.P.No.441 of 2014 on the file of the Motor Accidents Claims Tribunal, Principal District Court, Namakkal.

For Appellants : Mr.T.S.Arthanareeswaran
for C.Paraneedharan

For R2 : Mr.J.Chandran

J U D G M E N T

This Civil Miscellaneous Appeal has been filed seeking enhancement of compensation granted by the Tribunal in the award dated 18.06.2015 made in M.C.O.P.No.441 of 2014 on the file of the Motor Accidents Claims Tribunal, Principal District Court, Namakkal.

2.The appellants are claimants in M.C.O.P.No.441 of 2014 on the file of the Motor Accidents Claims Tribunal, Principal District Court, Namakkal and they filed the above claim petition claiming a sum of Rs.25,00,000/- as compensation for the death of one Kannan, who died in the accident that took place on 16.11.2013.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the bus belonging to the first respondent and directed both the first respondent as well as second respondent being the insurer of the said bus to pay a sum of Rs.6,27,000/- as compensation to the appellants/claimants, jointly and severally.

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

5.The learned counsel appearing for the appellants/claimants contended that the deceased was working as a mini auto driver and he was earning a sum of Rs.30,000/- per month. The Tribunal without considering the same, has fixed only a sum of Rs.6,000/- per month as notional income of the deceased. The amounts awarded by the Tribunal under the heads of funeral expenses and loss of love and affection are meagre and prayed for enhancement of compensation awarded by the Tribunal.

6.The learned counsel appearing for the second respondent/Insurance Company contended that the Tribunal after considering the materials available on record in proper perspective has awarded the compensation, which is just compensation and prayed for dismissal of the appeal.

7.Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the second respondent and perused the materials available on record.

8.From the materials available on record, it is seen the contention of the appellants is that the deceased was a mini auto driver and was earning a sum of Rs.30,000/- per month. The appellants have not substantiated the said contention by letting in any evidence. In the absence of any evidence to prove the income of the deceased, the Tribunal has fixed a sum of Rs.6,000/- per month as notional income of the deceased. The accident occurred on 16.11.2013. As per the contention of the learned counsel appearing for the appellants that the deceased was a mini auto driver and was earning a sum of Rs.30,000/- per

month, the amount fixed by the Tribunal for notional income of the deceased was meager and the same is hereby fixed as Rs.9,000/- per month. The Tribunal has not awarded any amount for future prospects. The deceased was aged 29 years at the time of accident and hence the appellants are entitled to 40% enhancement towards future prospects. The compensation awarded by the Tribunal towards loss of income is modified as follows:

$\text{Rs.9,000/-} + 3600 (\text{Rs.9,000/-} \times 40\%) \times 12 \times 17 \times 1/2 = \text{Rs.12,85,200/-}$.

A sum of Rs.10,000/- awarded by the Tribunal towards loss of love and affection is enhanced to Rs.40,000/-. A sum of Rs.5,000/- awarded by the Tribunal towards funeral expenses is hereby enhanced to Rs.15,000/-. The Tribunal has not awarded any amount towards loss of estate and this Court awards a sum of Rs.15,000/- under this head. The amounts awarded by the Tribunal under other heads 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 income	6,12,000	12,85,200	Enhanced
2.	Funeral Expenses	5,000	15,000	Enhanced
3.	Loss of Love and Affection	10,000	40,000	Enhanced
5.	Loss of Estate	-	15,000	Granted
	Total	6,27,000	13,55,200	Enhanced by Rs.7,28,200 /-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.6,27,000/- is hereby enhanced to Rs.13,55,200/- with interest at the rate of 7.5% per annum from the date of petition till the date of realization. The first appellant being the mother of the deceased is entitled to Rs.6,65,200/- and the appellants 2 to 4 are entitled to Rs.2,30,000/- each. The appellants/claimants are directed to pay necessary Court fee if any, on the enhanced compensation. Both the first and second respondents are directed to deposit the enhanced award amount now determined by this Court along with interest and costs, jointly and severally, 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 to 4 are permitted to withdraw their respective shares now determined by this Court along with interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-
Assistant Registrar(Insp.cell)

//True copy//

Sub Assistant Registrar

kj

To

The Principal District Judge,
The Motor Accidents Claims Tribunal
Namakkal.

+2cc to Mr.C.Paraneedharan, Advocate SR.No.3358

+1cc to Mr.J.Chandran, Advocate SR.No.3188

C.M.A.No.687 of 2016

VD(CO)
GMY(10/07/2019)