

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.09.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.No.709 of 2016

1.K.Kabali

2.K.Bhuvaneswari ... Appellants/Petitioners

Vs.

1.S.Sujatha
(R1 remained exparte before the Tribunal)

2.The Oriental Insurance Co. Ltd.,
No.115, Broadway Road,
Chennai - 600 108. ... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 25.04.2014 made in M.C.O.P.No.5425 of 2012 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai.

For Appellants : Mr.F.Terry Chellaraja

For R2 : Mr.M.Krishnamoorthy

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 25.04.2014 made in M.C.O.P.No.5425 of 2012 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai.

2.The appellants are claimants in M.C.O.P.No.5425 of 2012 on the file of the Motor Accident Claims Tribunal, IV Small

Causes Court, Chennai. The appellants filed the said claim petition claiming a sum of Rs.10,00,000/- as compensation for the death of one Srinivasan, who died in the accident that took place on 19.09.2012. 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.4,99,000/- 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 deceased was working as a Mechanic under AMR Auto Works, Ernavur, Chennai and was earning a sum of Rs.9,000/- per month. The Tribunal has erroneously taken a meagre sum of Rs.6,000/- per month as notional income of the deceased. Further contended that the Tribunal ought not to deduct the personal expenses of the deceased as 1/3. The appellants are widowed mother and unmarried sister of the deceased. The father of the deceased was pre-deceased. The deceased was the sole bread winner of the family and no other member to support his family other than the deceased. The sum awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

4.Per contra, learned counsel appearing for the 2nd respondent/Insurance Company contended that the appellants have not proved the avocation and income of the deceased. In the absence of any material, the Tribunal has rightly fixed notional income of the deceased at Rs.6,000/- per month. The sum awarded by the Tribunal under different heads are not meagre and prayed for dismissal of the appeal.

5.Heard Mr.F.Terry Chellaraja, learned counsel appearing for the appellants as well as Mr.M.Krishnamoorthy, learned counsel appearing for the 2nd respondent/Insurance Company and perused all the materials available on record.

6.From the materials available on record, it is seen that the appellants have claimed before the Tribunal that the deceased was working as a Mechanic under AMR Auto Works, Ernavur, Chennai and was earning a sum of Rs.9,000/- per month. The appellants have failed to produce the documents to substantiate the said contention. In the absence of any material, the Tribunal has taken notional income of the deceased at Rs.6,000/- per month and the same is meagre. Hence, this Court has taken a sum of Rs.6,500/- per month as notional income of the deceased. The accident is of the year 2012. The deceased

was aged 28 years at the time of accident. The Tribunal has not taken future prospects and the appellants are entitled to 40% future prospects. As per the Judgment of the Hon'ble Apex Court, the age of the deceased has to be taken into account instead of taking into account the age of the mother for applying multiplier. The Tribunal has applied multiplier '8'. The correct multiplier is '17'. The deceased was a bachelor at the time of the accident. The Tribunal has deducted 1/3rd instead of 50% towards personal expenses. Applying the multiplier '17' and deducting 1/2 towards the personal expenses of the deceased, the amount granted by the Tribunal towards pecuniary loss is modified to Rs.9,28,200/- [(Rs.6,500/- + 2,600 (Rs.6,500/- of 40%) x 12 x 17 x 1/2)]. The Tribunal has awarded a sum of Rs.1,00,000/- towards loss of love and affection which is on the higher side and this Court reduced the same to Rs.40,000/- to the appellants. The Tribunal has not awarded any sum towards loss of estate. Hence, a sum of Rs.15,000/- is granted towards loss of estate. The amount awarded by the Tribunal towards funeral expenses is proper and reasonable and does not require any modification. 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.	Pecuniary loss	Rs.3,84,000/-	Rs.9,28,200/-
2.	Loss of love and affection	Rs.1,00,000/-	Rs.80,000/-
3.	Loss of estate	-	Rs.15,000/-
4.	Funeral expenses	Rs.15,000/-	Rs.15,000/-
	Total	Rs.4,99,000/-	Rs.10,38,200/-

7.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.4,99,000/- is enhanced to Rs.10,38,200/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. No costs.

8.The appellants/claimants are directed to pay necessary Court fee, if any, on the enhanced 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. On such deposit, the appellants are permitted to

withdraw their respective share from the enhanced award amount on the basis of apportionment fixed by the Tribunal along with proportionate interest and costs, less the amount if any, already withdrawn.

Sd/-
Assistant Registrar (CS-I)

//True copy//

Sub Assistant Registrar

mtl

To

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

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

+1cc to M/s.M.Malar, Advocate SR.No.78831

+1cc to Mr.M.Krishnamoorthy, Advocate SR.No.78600

C.M.A.No.709 of 2016

BR (CO)
GMY (12/03/2020)

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