



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.03.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2057 of 2019

1.Kalaivani
2.Minor Dharshana
rep. By next friend, guardian and mother Kalaivani
3.Vijiya
4.Thangavel ... Appellants/Petitioners

Vs.

1.Yaminipriya K
(R1 set exparte before the Tribunal and
hence notice for R1 may be dispensed with)
2.The New India Assurance Co. Ltd.,
2nd Floor, Sethu Ramakrishna Trade Centre,
133/311-1, Trichy Main Road,
Gugai, Salem 636 006. ... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 26.02.2018, made in M.C.O.P.No.684 of 2016, on the file of the Special District Court, (Motor Accident Claims Tribunal), Salem.

For Appellants : Ms.T.Gayathri

For R2 : Mr.J.Chandran

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 award dated 26.02.2018, made in M.C.O.P.No.684 of 2016, on the file of the Special District Court, (Motor Accident Claims Tribunal), Salem.

2.By consent of the learned counsel appearing for the appellants as well as the 2nd respondent, the appeal is taken up for final disposal at the admission stage itself.



WEB COPY

3.The appellants-claimants filed M.C.O.P.No.684 of 2016, on the file of the Special District Court, (Motor Accident Claims Tribunal), Salem, claiming a sum of Rs.30,00,000/- as compensation for the death of one Manikandan, who died in the accident that took place on 25.02.2016.

4.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 bus belonging to the 1st respondent and directed the 2nd respondent-Insurance Company to pay a sum of Rs.15,03,664/- as compensation to the appellants.

5.Not being satisfied with the amounts granted by the Tribunal in the award dated 26.02.2018, made in M.C.O.P.No.684 of 2016, the appellants have come out with the present appeal.

6.The learned counsel appearing for the appellants contended that the deceased was working as a heavy vehicle driver and was earning a sum of Rs.30,000/- per month. The Tribunal without considering the documents filed by the appellants, erroneously fixed a meagre sum of Rs.8,000/- per month. The appellants are wife, daughter and parents of the deceased. The Tribunal has not awarded any amount for loss of love and affection. The appellants 3 and 4 are entitled to get compensation for parental consortium. The Tribunal has not awarded any amount for transportation and prayed for enhancement of the compensation.

7.Mr.J.Chandran, 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 material evidence, the Tribunal correctly fixed a sum of Rs.8,000/- per month as the notional income of the deceased and granted 40% enhancement towards future prospects and awarded compensation under various heads which are not meagre. The appellants have not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

8.Heard the learned counsel appearing for the appellants as well as the 2nd respondent and perused the materials available on record.

9.From the materials on record, it is seen that the appellants have contended that the deceased was working as a heavy vehicle driver in a lorry under R.W.2. They filed Ex.P5-driving license of the deceased and Ex.P9-salary certificate and examined P.W.3 who deposed that the deceased worked under him till March 2013 and has admitted that he has not filed any details of the attendance register as he is not maintaining the



WEB COPY

attendance register and salary register of his workers. The Tribunal has considered the evidence of P.W.3 and the fact that the appellants have not filed any bank statement to prove the income of the deceased. In the absence of material evidence, the Tribunal has fixed a sum of Rs.8,000/- per month as the notional income of the deceased. The accident has occurred in the year 2016. The notional income fixed by the Tribunal is meagre. Considering the entire materials on record, the notional income of the deceased is fixed at Rs.10,000/- per month. There are four claimants. The Tribunal erroneously deducted 1/3rd towards the personal expenses of the deceased. After deducting 1/4th towards the personal expenses of the deceased, the amount granted by the Tribunal towards loss of dependency is modified to Rs.20,16,000/- {[Rs.10,000/- + Rs.4,000/- (40% of Rs.10,000/-)] x 12 x 16 x 3/4}. The Tribunal failed to award any amount towards loss of love and affection to the appellants 2 to 4. The 2nd appellant being the daughter of the deceased is entitled to a sum of Rs.40,000/- towards loss of love and affection and the appellants 3 and 4 being the parents of the deceased are each entitled to a sum of Rs.30,000/- towards loss of love and affection. The amounts granted by the Tribunal towards other heads are just and reasonable and the same are 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	14,33,664/-	20,16,000/-	enhanced
2.	Funeral expenses	15,000/-	15,000/-	Confirmed
3.	Loss of love and affection to 2 nd appellant	-	40,000/-	Granted
4.	Loss of consortium	40,000/-	40,000/-	confirmed
5.	Loss of estate	15,000/-	15,000/-	confirmed
6.	Loss of love and affection to appellants 3 and 4	-	60,000/-	granted
	Total	15,03,664/-	21,86,000/-	Enhanced by Rs.6,82,336/-



10. In the result, the appeal is allowed and award granted by the Tribunal at Rs.15,03,664/- is enhanced to Rs.21,86,000/- 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.684 of 2016. On such deposit, the appellants 1, 3 and 4/claimants 1, 3 and 4 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 shares of the minor 2nd appellant is directed to be deposited in any of the Nationalized Bank, till the minor attains majority. The 1st appellant/mother of the minor 2nd appellant is permitted to withdraw the accrued interest, once in three months for the welfare of the minor 2nd appellant. 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 Special District Judge,
(Motor Accident Claims Tribunal),
Salem.

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

+lcc to Mr.C.Kulanthaivel, Advocate Sr.30428
+lcc to Mr.J.Chandran, Advocate Sr.30915

C.M.A.No.2057 of 2019

rsi[co]
srg 05/08/2019