

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No. 2748 of 2019

1.Bharathi
2.Divya Umamaheswari
3.Maha Shree
4.Anitha Gomathi (minor) .. Appellants/Petitioners
(minor rep. By her mother & NF, 1st appellant)

Vs.

1.Chitra
2.Royal Sundaram Alliance Ins. Co. Ltd.,
Subramaniam Building, 2nd Floor,
No.1, Club House Road, Anna Salai,
Chennai 02. .. Respondents/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 30.08.2018, made in M.C.O.P.No.3009 of 2016, on the file of the Small Causes Court, Special Sub Court-I, (Motor Accident Claims Tribunal), Chennai.

For Appellants: Mr. K. Varadha Kamaraj

For Respondents: Mr. E. Rajadurai (for R2)
for M/s.Vijayaraghavan

J U D G M E N T
सत्यमेव जयते

This appeal has been filed seeking enhancement of the compensation granted by the award dated 30.08.2018, made in M.C.O.P.No.3009 of 2016, on the file of the Small Causes Court, Special Sub Court-I, (Motor Accident Claims Tribunal), Chennai.

2.The appellants are the claimants in M.C.O.P.No.3009 of 2016, on the file of the Small Causes Court, Special Sub Court-I, (Motor Accident Claims Tribunal), Chennai. They filed the said claim petition, claiming a sum of Rs.40,00,000/- as compensation for the death of one Muralimohan, who died in the

accident that took place on 27.03.2016.

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 tanker lorry belonging to the 1st respondent and directed the 2nd respondent to pay a sum of Rs.13,14,000/- as compensation to the appellants.

4.Not being satisfied with the amounts awarded by the Tribunal in the award dated 30.08.2018, made in M.C.O.P.No.3009 of 2016, the appellants have come out with the present appeal.

5.Learned counsel appearing for the appellants contended that the deceased was an Electrician & Plumber (Tamilnadu Government Licensed Holder) and was earning a sum of Rs.18,000/- per month. The Tribunal erred in fixing a meagre sum of Rs.10,000/- as notional income of the deceased. The Tribunal erred in fixing the age of the deceased at 51 years, relying on Ex.P6-National Trade Certificate of Electrician, instead of Ex.P2, Post-mortem certificate. In Ex.P2, the age of the deceased is mentioned only as 48 years. In view of the same, the appellants are entitled to 25% enhancement towards future prospects. The multiplier '11' applied by the Tribunal in awarding compensation towards loss of dependency is not correct. The correct multiplier applicable is '13'. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of the compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the appellants have produced Ex.P6-National, the National Trade Certificate for Electrician, issued by the National Council for Training in Vocational Trades. The Tribunal has fixed the age of the deceased as 51 years taking into consideration the date of birth mentioned in Ex.P6, produced by the appellants. There is no error in fixing the age of the deceased. The appellants have not filed any document to prove the avocation and income of the deceased. The amounts awarded by the Tribunal under different heads are not meagre. The appellants have not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

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

8.From the materials on record, it is seen that the appellants have contended that the deceased was an Electrician,

registered with the Tamil Nadu Electricity Board and have marked license issued by the Tamil Nadu Electricity Board as Ex.P8. The appellants have also marked the certificate issued by the National Council for Training in Vocational Trades as Ex.P6. The Tribunal considering Ex.P6, has rightly fixed the age of the deceased as 51 years and applied the multiplier '11'. The contention of the learned counsel appearing for the appellants that the Tribunal ought to have fixed the age of the deceased as per Ex.P2 - post-mortem certificate is without merits. The appellants have produced Ex.P6 in which the date of birth is mentioned. It is well settled that only in the absence of any materials with regard to age, the age mentioned in the post-mortem certificate will be taken into consideration for fixing the age. The appellants are entitled to only 10% enhancement towards future prospects. The appellants by filing Ex.P8 - license issued by the Tamil Nadu Electricity Board and Exs.P6 and P7, have proved the avocation of the deceased. In the absence of any evidence with regard to income, the Tribunal fixed the notional income of the deceased at Rs.18,000/- per month. The accident is of the year 2016. A sum of Rs.13,000/- per month is fixed as the notional income of the deceased. Hence, the compensation awarded towards loss of dependency is modified to Rs.14,15,700/- {[Rs.13,000/- + Rs.1,300/- (10% of Rs.13,000/-)] x 12 x 11 x 3/4}. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, 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 dependency	10,89,000/-	14,15,700/-	enhanced
2.	Loss of consortium	40,000/-	40,000/-	confirmed
3.	Loss of love and affection	1,50,000/-	1,50,000/-	confirmed
4.	Loss of estate	15,000/-	15,000/-	confirmed
5.	Transport charges	5,000/-	5,000/-	confirmed
6.	Funeral expenses	15,000/-	15,000/-	confirmed

	Total	13,14,000/-	16,40,700/-	Enhanced by Rs.3,26,700/-
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9. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.13,14,000/- is enhanced to Rs.16,40,700/- along with interest and costs. The 2nd respondent Insurance Company is directed to deposit the enhanced award amount, now determined by this Court, 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.3009 of 2019. On such deposit, the appellants 1 to 3 are permitted to withdraw their shares of the award amount, along with proportionate interest and costs, as per the ratio of apportionment fixed by the Tribunal, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The share of the minor 4th appellant is directed to be deposited in any one of the Nationalized Bank, till the minor attains majority. The 1st appellant/mother of the minor 4th appellant is permitted to withdraw the accrued interest, once in three months for the welfare of the minor 4th appellant. The appellants are directed to pay the court fee, if any, on the enhanced amount of Rs.3,26,700/-. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

gsa
To

1. The Special Subordinate Judge No.1,
Small Causes Court,
(Motor Accident Claims Tribunal),
Chennai.

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

+1cc to Mr.N.Vijayaraghavan, Advocate SR.102599
+1cc to Mr.K.Varadha Kamaraj, Advocate SR.102175

C.M.A.No.2748 of 2019

SR(CO)
CB(30/09/2020)