

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2089 of 2019

1.Dhanalakshmi
2.Dhanapal
3.Mohan
4.Manimekalai

.. Appellants/Petitioners

Vs.

1.Gowtham

2.The National Insurance Co. Ltd.,
Divisional Office No.1, L.R.N.Colony,
2nd Floor, Saradha College Road,
Salem 636 007.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 10.09.2018, made in M.C.O.P.No.1227 of 2016, on the file of the Special District Court, (Motor Accident Claims Tribunal), Salem.

For Appellants : Mr.T.S.Arthanareeswaran

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 10.09.2018, made in M.C.O.P.No.1227 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.

3.The appellants-claimants filed M.C.O.P.No.1227 of 2016, on the file of the Special District Court, (Motor Accident Claims Tribunal), Salem, claiming a sum of Rs.25,00,000/- as compensation for the death of one Nagaraj, who died in the accident that took place on 04.03.2016.

4.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the 1st respondent, rider-cum-owner of the motorcycle and directed the respondents to pay a sum of Rs.4,61,000/- jointly and severally as compensation to the appellants.

5.Not being satisfied with the amounts granted by the Tribunal in the award dated 10.09.2018, made in M.C.O.P.No.1227 of 2016, the appellants have come out with the present appeal.

6.The learned counsel appearing for the appellants contended that the deceased was aged 63 years and owning and running a power loom and was earning a sum of Rs.20,000/- per month at the time of accident. He was having his own unit of power loom and was working in his unit. The appellants have produced Exs.P18 to P20 to prove the income of the appellants. The Tribunal erroneously rejected the documents and fixed a meagre sum of Rs.7,000/- as the monthly income of the deceased. The amounts awarded by the Tribunal under other heads are meagre and prayed for enhancement of the compensation.

7.Per contra, Mr.J.Chandran, learned counsel appearing for the 2nd respondent-Insurance Company contended that the deceased was aged 70 years at the time of accident. The appellants have not filed any evidence to prove the age, avocation and income of the deceased. The appellants are not dependents of the deceased. In the absence of any material evidence, the Tribunal rightly fixed a sum of Rs.7,000/- as the monthly income of the deceased. 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 aged 63 years and was working as a power loom worker in his own unit and was earning a sum of Rs.20,000/- per month. The appellants have not filed any document to prove the age, avocation and income of the deceased. In the absence of material evidence, the Tribunal considering the age mentioned in the post-mortem report and FIR, fixed the age of the deceased as 70 years and rejected Exs.P18 to P20 on the ground that those documents are not Income Tax returns and the deceased has not paid any Income Tax, fixed a sum of Rs.7,000/- as the monthly income of the deceased. The same is meagre. The accident is of the year 2016. The monthly income of the deceased is fixed at Rs.9,000/- and after deducting 1/4th towards the personal expenses of the deceased,

the amounts granted by the Tribunal towards loss of income is modified to Rs.4,05,000/- [Rs.9,000/- x 12 x 5 x $\frac{3}{4}$]. 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	3,15,000/-	4,05,000/-	enhanced
2.	Funeral expenses	15,000/-	15,000/-	confirmed
3.	Loss of love and affection	40,000/-	40,000/-	Confirmed
4.	Loss of estate	15,000/-	15,000/-	confirmed
5.	Medical bills	76,000/-	76,000/-	confirmed
	Total	4,61,000/-	5,51,000/-	Enhanced by Rs.90,000/-

10. In the result, the appeal is partly allowed and compensation awarded by the Tribunal at Rs.4,61,000/- is enhanced to Rs.5,51,000/- along with interest and costs. The respondents 1 and 2 are jointly and severally 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.1227 of 2016. On such deposit, the appellants/claimants 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. No costs.

Sd/-

Assistant Registrar (Insp.Cell)

//True Copy//

Sub Assistant Registrar

gsa

To

The Special District Judge,
(Motor Accident Claims Tribunal),
Salem.

+1cc to Mr.J.Chandran, Advocate, S.R.No.31754

+2ccs to Mr.C.Praneedharan, Advocate, S.R.No.32347

C.M.A.No.2089 of 2019

AD (CO)

RRS (11/07/2019)



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