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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2331 of 2019

B.Sumathi

.. Appellant / Petitioner

Vs.

1.A.Kamaludeen

2.National Insurance Co., Ltd.,
Regina Mansion,
No.46, Moore Street,
Parrys, Chennai - 600 001.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 16.11.2018 made in M.C.O.P.No.1304 of 2016 on the file of the Motor Accident Claims Tribunal, Chief Judge, Court of Small Causes, Chennai.

For Appellant : Ms.Ramya V.Rao

For R2 : Mr.J.Chandran

J U D G M E N T

The Civil Miscellaneous Appeal is filed by the appellant/claimant seeking enhancement of compensation granted by the Tribunal in the award dated 16.11.2018 made in M.C.O.P.No.1304 of 2016 on the file of the Motor Accident Claims Tribunal, Chief Judge, Court of Small Causes, Chennai.

2.By consent of both the learned counsel appearing for the appellant and the 2nd respondent/Insurance Company, the appeal is taken up for final disposal at the stage of admission itself.

3.The appellant is claimant in M.C.O.P.No.1304 of 2016 on the file of the Motor Accident Claims Tribunal, Chief Judge, Court of Small Causes, Chennai. She filed the said claim petition claiming a sum of Rs.35,00,000/- as compensation for the death of her son viz., Gopi, who died in the accident that



took place on 09.11.2015. 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 both the 1st respondent as well as the 2nd respondent/Insurance Company being the insurer of the said bus to pay jointly and severally a sum of Rs.10,25,000/- as compensation to the appellant. Not being satisfied with the amount awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

4.The learned counsel appearing for the appellant contended that the deceased was aged 20 years at the time of the accident, he was a car driver and was earning a sum of Rs.15,000/- per month. The Tribunal erred in fixing a sum of Rs.6,500/- as monthly income of the deceased. The Tribunal has not granted any enhancement towards future prospects. The Tribunal has not awarded any amount towards loss of love and affection. The amounts awarded by the Tribunal under other heads are meagre and prayed for enhancement of compensation.

5.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the appellant has not produced the driving license of the deceased to prove his avocation and income. In the absence of any material evidence, the Tribunal has rightly fixed monthly income of the deceased at Rs.6,500/- and granted 40% enhancement towards future prospects. The Tribunal after considering both oral and documentary evidence, has awarded compensation, which is not meagre. The appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

6.Heard the learned counsel appearing for the appellant as well as the 2nd respondent/Insurance Company and perused all the materials available on record.

7.From the materials available on record, it is seen that the appellant has contended that the deceased was a car driver and was earning a sum of Rs.15,000/- per month. The appellant has failed to substantiate the said contention. In the absence of producing driving license of the deceased and any material evidence with regard to income of the deceased, the Tribunal has fixed a sum of Rs.6,500/- per month as notional income of the deceased. The accident is of the year 2015 and the notional income fixed by the Tribunal is meagre. A sum of Rs.9,000/- is fixed as notional income of the deceased. The Tribunal has fixed



the age of the deceased as 18 years as per Ex.P7/Aadhar card and applied multiplier '18'. The deceased was a bachelor and the Tribunal has deducted 1/2 towards personal expenses. The contention of the learned counsel appearing for the appellant that the Tribunal has not granted any enhancement towards future prospects is erroneous. The Tribunal has already granted 40% enhancement towards future prospects. The amount awarded by the Tribunal towards loss of future dependency is modified to Rs.13,60,800/- (Rs.9,000/- + 3,600 (Rs.9,000/- x 40%) x 12 x 18 x 1/2). The Tribunal has not awarded any amount towards loss of love & affection. This Court awards a sum of Rs.40,000/- towards loss of love and affection to the appellant. The amounts awarded by the Tribunal under other heads are just and reasonable and the same 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 future dependency	9,82,800	13,60,800	Enhanced
2.	Loss of estate	15,000	15,000	Confirmed
3.	Funeral expenses	15,000	15,000	Confirmed
4.	Transport expenses	12,200	12,200	Confirmed
5.	Loss of love & affection	-	40,000	Granted
	Total	Rs.10,25,000/-	Rs.14,43,000/-	Enhanced by Rs.4,18,000/-

8.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.10,25,000/- is hereby enhanced to Rs.14,43,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant/claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. Both the 1st respondent as well as the 2nd respondent/Insurance Company 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 appellant/claimant is permitted to withdraw the entire award amount along with interest and costs, less the amount if any, already withdrawn by filing necessary applications before the Tribunal. No costs.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

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To

1.The Chief Judge,
Court of Small Causes,
Motor Accidents Claims Tribunal,
Chennai.

+2 ccs to M/s.A.N.Viswanatha Rao, Advocate, S.R.No.42337

C.M.A.No.2331 of 2019

PPA(CO)
SSM(19/09/2019)