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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.03.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.176 of 2018

1.Sarasa

2.Minor Swathi

3.Minor Priyadharshini

4.Minor Pugalendhi

5.Susila

6.Periyasamy .. Appellants/Petitioner
(1st appellant for herself and on behalf
of the 2nd, 3rd and 4th minor appellants)

Vs.

1.Rajamani

2.The Oriental Insurance Company Limited,
Divisional Office, Westernpart,
Shevapet, Salem - 2,
T.P.HUB Parimalam Complex, Erode District.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 18.06.2015 made in M.C.O.P.No.1854 of 2013 on the file of the Motor Accident Claims Tribunal, Special District Court, Salem.

For Appellants : Mr.K.Suryanarayanan
for Mr.K.Kuppusamy

For R2 : Mr.S.Manohar

R1 : Set Exparte



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 18.06.2015 made in M.C.O.P.No.1854 of 2013 on the file of the Motor Accident Claims Tribunal, Special District Court, Salem.

2.The appellants are claimants in M.C.O.P.No.1854 of 2013 on the file of the Motor Accident Claims Tribunal, Special District Court, Salem. They filed the said claim petition claiming a sum of Rs.20,00,000/- as compensation for the death of one Ganesan, who died in the accident that took place on 13.04.2013. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the rider of the motorcycle belonging to the 1st respondent and as the deceased was under the influence of alcohol, fixed 25% contributory negligence on the part of the deceased and awarded a sum of Rs.8,14,650/- as compensation and directed the 2nd respondent Insurance Company to pay a sum of Rs.8,14,650/- as compensation to the appellants at the first instance and recover the same from the 1st respondent. Challenging the portion of the award fixing 25% contributory negligence on the part of the deceased and for enhancement of compensation, the appellants have come out with the present appeal.

3.The learned counsel appearing for the appellants contended that the Tribunal erred in deducting 25% of the award amount from the total compensation on the ground that the deceased was also responsible for the accident, as he has consumed alcohol. The deceased was working as a coolie in Briklin factory and was earning a sum of Rs.10,000/- per month. The Tribunal has erroneously fixed a meagre sum of Rs.6,000/- per month and deducted 1/4th instead of 1/5th towards personal expenses. The deceased was aged 30 years at the time of the accident. The Tribunal has not granted any enhancement towards future prospects. The total compensation awarded by the Tribunal is meagre and prayed for enhancement of compensation.

4.Per contra, Mr.S.Manohar, learned counsel appearing for the 2nd respondent-Insurance Company contended that the deceased consumed alcohol at the time of the accident and the same was recorded in the accident register. The Tribunal considering the averments made in the accident register, has rightly deducted 25% of the compensation from the total compensation. The appellants have not filed any documents to prove the age, income and avocation of the deceased. In the absence of any material,

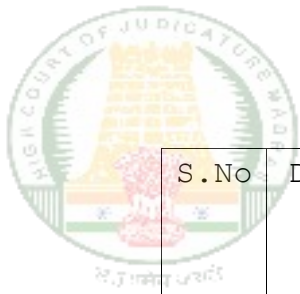


the notional income fixed by the Tribunal is not meagre. The amounts granted by the Tribunal under different heads are not meagre. The Tribunal has granted excessive amount towards loss of love & affection and the appellants have not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

5. Heard the learned counsel appearing for the appellants as well as 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 deceased was a pillion rider at the time of the accident. In the accident register, it was recorded that the deceased had consumed alcohol at the time of the accident. The Tribunal has reduced 25% of the compensation from the total compensation on the ground that the deceased was also responsible for the accident, the said reasoning is not correct. The Tribunal having held that the accident occurred due to the negligence on the part of the rider of the 1st respondent's motorcycle, 25% deduction is erroneous. The appellants are entitled to entire compensation awarded by the Tribunal.

7. As far as quantum of compensation is concerned, the appellants have stated that the deceased was working as a coolie in Briklin factory and was earning a sum of Rs.10,000/- per month. The appellants have failed to produce the documents to substantiate the said contention. In the absence of any materials, the Tribunal has fixed a sum of Rs.6,000/- per month as notional income of the deceased. The accident is of the year 2013 and the deceased was aged 30 years at the time of the accident. The Tribunal has not granted any enhancement towards future prospects. A sum of Rs.6,500/- is fixed as notional income of the deceased and 40% is granted towards future prospects. The amount granted by the Tribunal towards loss of income is modified to Rs.14,85,120/- (6,500 + 40%) (9,100 x 12 x 17 x 4/5). The amount awarded by the Tribunal towards loss of consortium is meagre and hence, the same is enhanced to Rs.40,000/-. The amount awarded by the Tribunal towards funeral expenses is excessive and hence, the same is reduced to Rs.15,000/-. The Tribunal has not awarded any amount towards loss of estate. A sum of Rs.15,000/- is granted towards loss of estate. The amount awarded by the Tribunal towards loss of love & affection is hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:



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S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of annual income	6,19,650	14,85,120	Enhanced
2.	Loss of consortium to the 1 st appellant	30,000	40,000	Enhanced
3.	Loss of love and affection to the appellants 2 to 4 Rs.40,000/- each	1,20,000	1,20,000	Confirmed
4.	Loss of love and affection to the appellants 5 & 6 Rs.10,000/- each	20,000	20,000	Confirmed
5.	Funeral expenses	25,000	15,000	Reduced
6.	Loss of estate	-	15,000	Granted
	Total	Rs.8,14,650/-	Rs.16,95,120/-	Enhanced by - Rs.8,80,470/-

8. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.8,14,650/- is hereby enhanced to Rs.16,95,120/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. 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 at first instance and recover the same



from the 1st respondent. On such deposit, the appellants 1, 5 & 6 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. The share of the minor appellants 2, 3 & 4 is directed to be deposited in any one of the Nationalised Bank till they attain majority. The 1st appellant being the mother of the appellants 2, 3 & 4 is permitted to withdraw the accrued interest once in three months for the welfare of the minors. No costs.

-s/d-

Assistant Registrar (CS-IV)

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Sub-Assistant Registrar

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To

1.The Special District Judge,
Motor Accidents Claims Tribunal,
Salem.

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

+1 CC to Mr.S.Manohar, Advocate sr 26740.

+1 CC to Mr.K.Kuppusamy, Advocate sr 27295.

C.M.A.No.176 of 2018

SAI (CO)
SP(30/08/2019)