

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.215 of 2018

1.K.Vasthirani

2.Minor. Evlinelizabeth.W
(Minor 2nd appellant rep. by 1st appellant
mother)

3.I.Epharaimraj ... Appellants/ Petitioners

Vs.

1.P.Sivagami

2.The New India Assurance Co. Ltd.,
Divisional Office next to Prabath theatre
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 judgment and decree dated 18.10.2016 made in M.C.O.P.No.1953 of 2013 on the file of the Motor Accident Claims Tribunal, District and Sessions Court, Salem.

For Appellants : Mr.K.Kuppusamy
R1 : Exparte
For R2 : Mr.C.Ramesh Babu

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 18.10.2016 made in M.C.O.P.No.1953 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.1953 of 2013 on the file of the Motor Accident Claims Tribunal, Special District Court, Salem. The appellants filed the said claim petition claiming a sum of Rs.40,00,000/- as compensation for the death of one Wilson, who died in the accident that took place on 08.02.2013. 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 lorry belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said lorry to pay a sum of Rs.13,35,060/- as compensation to the appellants. Not being satisfied with the amount awarded by the Tribunal, the appellants have come out with the present appeal seeking enhancement of compensation.

3.The learned counsel appearing for the appellants/claimants contended that the Tribunal having held that the accident occurred due to rash and negligent driving by the driver of the lorry belonging to the 1st respondent, ought to have awarded more compensation to the appellants. The deceased was aged 37 years at the time of accident and was working as Engineer in various concerns and was earning more than Rs.50,000/- per month. The Tribunal erred in fixing only a sum of Rs.10,000/- per month as notional income of the deceased. The Tribunal has not granted any enhancement towards future prospects. The amounts awarded by the Tribunal towards loss of consortium and loss of love & affection are meagre and prayed for enhancement of compensation.

4.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that in the absence of material evidence, the Tribunal has fixed a sum of Rs.10,000/- per month as notional income of the deceased. A sum of Rs.50,000/- awarded by the Tribunal towards loss of consortium is excessive. The appellants have not made out any case for enhancement and prayed for dismissal of the appeal.

5.Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for 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 appellants have contended that the deceased was owning an Electrical shop and was earning a sum of Rs.50,000/- per month. The appellants have failed to substantiate the said contention. In the absence of any material evidence, the Tribunal has fixed notional income of the deceased at Rs.10,000/- per month. The accident is of the year 2013 and the notional income fixed by the Tribunal is meagre. This Court fixes a sum of Rs.12,000/- per month as notional income of the deceased. The deceased was aged 37 years at the time of accident. The Tribunal has not granted any enhancement towards future prospects. The appellants are entitled to 40% enhancement towards future prospects. The Tribunal applied multiplier 15 and deducted 1/3rd towards personal expenses. The amount awarded by the Tribunal towards loss of earning is modified to Rs.20,16,000/- (Rs.12,000/- +

4800 (Rs.12,000/- x 40%) x 12 x 15 x 2/3). A sum of Rs.25,000/- and Rs.50,000/- awarded by the Tribunal towards funeral expenses and loss of consortium are excessive and the same are reduced to Rs.15,000/- and 40,000/- respectively. A sum of Rs.10,000/- awarded by the Tribunal towards loss of love and affection to the 3rd appellant is meagre and the same is enhanced to Rs.20,000/-. A sum of Rs.50,000/- awarded by the Tribunal towards loss of love and affection to the 2nd appellant is excessive and the same is reduced to Rs.40,000/-. The Tribunal has not awarded any amount for loss of estate. A sum of Rs.15,000/- is awarded towards loss of estate. 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 earning	12,00,060	20,16,000	Enhanced
2.	Loss of consortium	50,000	40,000	Reduced
3.	Funeral expenses	25,000	15,000	Reduced
4.	Loss of love and affection to the 3 rd appellant/ father of the deceased	10,000	20,000	Enhanced
5.	Loss of love and affection to the 2 nd appellant / daughter of the deceased	50,000	40,000	Reduced
6.	Loss of estate	-	15,000	Granted
	Total	Rs.13,35,060/-	Rs.21,46,000/-	Enhanced by Rs.8,10,940/-

7.In the result, this Civil Miscellaneous Appeal is

partly allowed and the compensation awarded by the Tribunal at Rs.13,35,060/- is hereby enhanced to Rs.21,46,000/- 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 1st appellant being wife of the deceased is entitled to a sum of Rs.10,05,400/-, the 2nd appellant being daughter of the deceased is entitled to a sum of Rs.7,70,300/- and 3rd appellant being father of the deceased is entitled to a sum of Rs.3,70,300/- as compensation. The 2nd respondent/Insurance Company is directed to deposit the entire 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. On such deposit, the appellants 1 and 3/claimants 1 and 3 are permitted to withdraw their respective shares of the award amount along with proportionate interest and costs, less the amount if any, already withdrawn. The share of the minor/2nd appellant is directed to be deposited in any one of the Nationalised Banks till the minor attains majority. The mother of the 2nd appellant/1st appellant is permitted to withdraw the accrued interest once in three months for the welfare of the minor. No costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

kj

To

The District and Sessions Judge
Additional District and Sessions Judge
Motor Accidents Claims Tribunal,
Salem.

+1cc to Mr.K.Kuppusamy , Advocate SR.No.40090

+1cc to Mr.C.Ramesh Babu , Advocate SR.No. 39806

A.SK(18/02/2020)

C.M.A.No.215 of 2018

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