

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.03.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.263 OF 2018

1.Duraisami
2.Minor Saravanan .. Appellants
(Minor appellant No.2 is rep. by his
next friend guardian father Duraisamy)

Vs.

1.Ulaganathan
2.United India Insurance Co., Ltd.,
Regional Office - Hub Ranga Building,
Peramanur Main Road, Peramanur,
Salem - 636 007. .. Respondents

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 22.09.2017 made in M.C.O.P.No.1499 of 2015 on the file of the Motor Accident Claims Tribunal, I-Additional District Court, Salem.

For Appellants : Mr.T.S.Arthanareeswaran

For R2 : Mr.T.Ravichandran

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 22.09.2017 made in M.C.O.P.No.1499 of 2015 on the file of the Motor Accident Claims Tribunal, I-Additional District Court, Salem.

2.By consent of both parties, the appeal is taken up for final disposal at the stage of admission itself.

3.The appellants are claimants in M.C.O.P.No.1499 of 2015 on

the file of the Motor Accident Claims Tribunal, I-Additional District Court, Salem. The appellants filed the said claim petition claiming a sum of Rs.25,00,000/- as compensation for the death of one Sarasu, who died in the accident that took place on 02.05.2015. 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 motorcycle belonging to the 1st respondent and directed the 2nd respondent-Insurance Company to pay a sum of Rs.7,85,000/- 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.

4.The learned counsel appearing for the appellants contended that the deceased was working as a helper in masonry work and was earning a sum of Rs.20,000/- per month at the time of the accident. The Tribunal has erroneously fixed a meagre sum of Rs.4,000/- per month as notional income of the deceased. The deceased was aged 40 years at the time of the accident. The Tribunal has not awarded any amount towards future prospects. The amounts awarded by the Tribunal under different 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 appellants have not filed any documents to prove the avocation and income of the deceased. In the absence of any material, the Tribunal has fixed Rs.4,000/- per month as notional income of the deceased which is not meagre. The appellants have not made out any case for enhancement and prayed for dismissal of the appeal.

6.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.

7.From the materials available on record, it is seen that the appellants have contended that the deceased was working as a helper in masonry work and was earning a sum of Rs.20,000/- per month at the time of the accident. The appellants have failed to produce the documents to substantiate the said contention. In the absence of any material, the Tribunal has fixed notional income of the deceased at Rs.6,000/- per month and the same is meagre. The accident is of the year 2015. a sum of Rs.8,000/- is fixed as monthly income of the deceased. The deceased was aged 40 years at the time of the accident. The appellants are entitled to 40% enhancement towards future prospects. The amount granted by the Tribunal towards loss of income is modified to Rs.13,44,000/- (Rs.8,000/- + 3,200 (Rs.8,000/- x 40%) $12 \times 15 \times \frac{2}{3}$). The Tribunal has awarded only

a sum of Rs.20,000/- towards loss of consortium for 1st appellant and the same is enhanced to Rs.40,000/-. A sum of Rs.20,000/- awarded by the Tribunal towards funeral expenses is reduced to Rs.15,000/-. The Tribunal has not granted any amount towards loss of estate. A sum of Rs.15,000/- is granted towards loss of estate. The amounts awarded by the Tribunal under other heads 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.	Transportation charges	5,000	5,000	Confirmed
2.	Funeral expenses	20,000	15,000	Reduced
3.	Loss of consortium for 1 st appellant	20,000	40,000	Enhanced
4.	Loss of love & affection for 2 nd appellant (minor)	20,000	20,000	Confirmed
5.	Loss of income	7,20,000	13,44,000	Enhanced
6.	Loss of estate	-	15,000	Granted
	Total	Rs.7,85,000/-	Rs.14,39,000/-	Enhanced by Rs.6,54,000/-

8. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.7,85,000/- is hereby enhanced to Rs.14,39,000/- 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 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. On such deposit, the 1st appellant is permitted to withdraw his share of the enhanced award amount on the basis of apportionment fixed by the Tribunal, along with

interest and costs, less the amount if any, already withdrawn by filing necessary applications before the Tribunal. The share of the minor 2nd appellant is directed to be deposited in any one of the Nationalised Bank till he attains majority. The 1st appellant being the father of the 2nd appellant is permitted to withdraw the accrued interest once in three months for the welfare of the minor. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

mtl

To

1. The I-Additional District Judge,
Motor Accidents Claims Tribunal,
Salem.
2. The Section Officer,
VR Section, High Court,
Madras.

+2cc to Mr.T.S.Arthanareeswaran, Advocate, S.R.No.20863

+1cc to Mr.T.Ravichandran, Advocate, S.R.No.21337

C.M.A.No.263 of 2018

NR(CO)
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