

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.307 of 2018

1.Mallika
2.Elavalagan

.. Appellants/Petitioners

Vs.

1.Gunasekaran
(Since R1 remained exparte before the
Tribunal his presence may be dispensed with)
2.Royal Sundaram Alliance Insurance Company Limited,
having its office at
No. 2, Club House Road,
(Opp. Spencers Plaza),
Anna Salai,
Chennai - 600 002.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under
Section 173 of the Motor Vehicles Act, 1988, against the
Judgment and Decree dated 10.10.2017 made in M.C.O.P.No.394
of 2012 on the file of the Motor Accident Claims Tribunal, IV
Additional District Judge, Thiruvallur District, Ponneri.

For Appellants : M/s.A.Subadra

For R2 : Mr.G.Vasudevan

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for
enhancement of compensation of the award dated 10.10.2017
made in M.C.O.P.No.394 of 2012 on the file of the Motor
Accident Claims Tribunal, IV Additional District Judge,
Thiruvallur, Ponneri.

2.The appellants are claimants in M.C.O.P.No.394 of 2012
on the file of the Motor Accident Claims Tribunal, IV
Additional District Judge, Thiruvallur, Ponneri. They filed
the above said claim petition, claiming a sum of
Rs.10,00,000/- as compensation for the death of their son

Sankar, who died in the road accident that took place on 24.04.2012. 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 insured with the 2nd respondent and directed the 2nd respondent-Insurance Company to pay a sum of Rs.8,46,000/- as compensation to the appellants/claimants. Not being satisfied with the award amount granted by the Tribunal, the appellants have come out with the present appeal seeking enhancement of compensation.

3.The learned counsel appearing for the appellant contended that the deceased was a keyboard player and proprietor of Rangam Deepam Orchestra and was earning a sum of Rs.30,000/- per month. The appellant filed Exs.P7 and P8 to prove the avocation and income of the deceased. The Tribunal failed to consider the documents filed by the appellants and erroneously fixed a meager sum of Rs.10,400/- as notional income of the deceased and deducted 50% towards his personal expenses. The Tribunal erroneously applied multiplier 13 taking into consideration the age of the mother of the deceased for fixing compensation. The amount awarded by the Tribunal towards loss of love and affection and funeral expenses are meagre. The Tribunal has not awarded any amount towards loss of estate and prayed for enhancement of compensation.

4.Per Contra, Mr.G.Vasudevan, learned counsel appearing for the 2nd respondent/Insurance Company contended that the appellants have not proved the avocation and income of the deceased. In the absence of any material, the Tribunal has fixed a sum of Rs.10,400/- towards notional income of the deceased, which is excessive. In view of the same, the appellants are not entitled for any enhancement of compensation and prayed for dismissal of the appeal.

5.I have heard the learned counsel appearing for the appellants as well as the second 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 claimed that the deceased was a keyboard player and proprietor of Rangam Deepam Orchestra and was earning a sum of Rs.30,000/- per month. The appellants filed Ex.P7/Identity card of the deceased and Ex.P8/certificate issued to the deceased for learning cine music. The appellants have not filed any document to prove the income of the deceased. In the absence of any material

with regard to income, the Tribunal fixed a sum of Rs.10,400/- per month towards notional income of the deceased which is not meager. The deceased was aged about 30 years at the time of accident. The Tribunal has not awarded any amount for future prospects. The Tribunal has applied multiplier '13' taking into consideration the age of the mother of the deceased and as per the judgment of Hon'ble Apex Court reported in 2017(2) TNMAC 609 [(SC) National Ins. Co. v. Pranay Sethi & others] the appellants are entitled to 40% enhancement towards future prospects. The age of deceased is basis for applying multiplier. The correct multiplier applicable is '17'. The amounts granted by the Tribunal towards loss of dependency is modified to Rs.14,85,120/- [Rs.10,400/- + Rs.4,160/- (40% of Rs.10,400) X12 X 17 X ½]. The Tribunal has granted a sum of Rs.14,000/- and Rs.20,800/- towards funeral expenses and loss of love and affection and the same are meagre. The appellants are entitled to a sum of Rs.15,000/- towards funeral expenses and a sum of Rs.40,000/- each towards loss of love and affection. The Tribunal has not awarded any amount towards loss of estate. A sum of Rs.15,000/- is granted towards loss of estate. Thus, the compensation awarded by the Tribunal is modified as follows:

S.N o	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	8,11,200	14,85,120	Enhanced
2.	Funeral expenses	14,000	15,000	Enhanced
3.	Loss of love & affection	20,800	80,000	Enhanced
4.	Loss of estate	-	15,000	Granted
	Total	Rs.8,46,000/-	Rs.15,95,120/-	Enhanced by Rs.7,49,120/-

7. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.8,46,000/- is hereby enhanced to Rs.15,95,120/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. 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 appellants/claimants are permitted to withdraw their respective share of the enhanced award amount as per the ratio of apportionment fixed by the Tribunal along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. No costs.

Sd/-
Assistant Registrar (CS-III-MDU)

//True Copy//

Sub Assistant Registrar

gbi/rst

To

The IV Additional District Judge,
Motor Accident Claims Tribunal,
Thiruvallur,
Ponneri.

Copy to:
The Section Officer,
VR Section,
High Court,
Madras.

+1cc to M/s.M.Malar, Advocate, S.R.No.23701

+1cc to Mr.G.Vasudevan, Advocate, S.R.No.23482

PVS (CO)
CB(17/08/2020)

C.M.A.No.307 of 2018

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