

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.320 of 2018

1.Prabavathi
2.Mathivanan

.. Appellants/Petitioner

Vs.

1.Senguttuvan
2.National Insurance Co.Ltd.,
Divisional Office II,
11, Ramakrishna Road,
Salem - 7.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 13.06.2016 made in M.C.O.P.No.1746 of 2012 on the file of the Motor Accident Claims Tribunal, Special District Court, Salem.

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

For R2 : No Appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation of the award dated 13.06.2016 made in M.C.O.P.No.1746 of 2012 on the file of the Motor Accident Claims Tribunal, Special District Court, Salem.

2.The appellants are the claimants in M.C.O.P.No.1746 of 2012 on the file of the Motor Accident Claims Tribunal, Special District Court, Salem. They filed the above said claim petition, claiming a sum of Rs.40,00,000/- as compensation for the death of one Ravi, who died in the accident that took place on 06.08.2012.

3.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 tempo belonging to the first respondent and directed the second respondent-Insurance Company, being the insurer of the vehicle, to pay a sum of Rs.20,99,185/- as compensation to the appellants at the

first instance and recover the same from the owner of the vehicle, the first respondent herein, as the owner of the vehicle did not produce the driving license of the driver of the tempo.

4. Not being satisfied with the amount granted by the Tribunal, the appellants have come out with the present appeal seeking enhancement of compensation.

5. The learned counsel appearing for the appellants contended that the Tribunal ought to have granted 30% enhancement towards future prospects instead of 15%. As per Ex.P7/driving license, the age of the deceased is only 50 years and the Tribunal erroneously fixed the age of the deceased as 51 years. The Tribunal erroneously deducted 10% of the monthly income arrived towards income tax, which is excessive. The correct multiplier applicable is '13' and the Tribunal erred in applying multiplier '11'. The amount awarded by the Tribunal towards loss of consortium is meager. The Tribunal has not granted any amount towards loss of estate and prayed for enhancement of compensation.

6. Though notice has been served on the second respondent- Insurance Company and its name is printed in the cause list, there is no appearance on behalf of the second respondent, either in person or through counsel.

7. I have heard the learned counsel appearing for the appellants and perused entire materials on record.

8. From the materials available on record, it is seen that the date of birth of the deceased as mentioned in Ex.P7/driving license is 15.05.1962 and the accident took place on 06.08.2012. In view of the above, at the time of accident, the deceased was aged 50 years. The Tribunal erroneously fixed age of the deceased as 51 and applied wrong multiplier '11'. The correct multiplier applicable is '13'. The monthly income of the deceased is Rs.22,066/-. The Tribunal rightly granted 15% enhancement towards future prospects. Therefore, from the above findings, the compensation awarded by the Tribunal towards loss of income is modified to Rs.26,39,104/- [Rs.22,066/- + Rs.3,310/- (15% of Rs.22,066/-) X 12 X 13 X 2/3]. The contention of the learned counsel for the appellant is that the Tribunal erroneously deducted 10% of the monthly income arrived towards income tax. He further contended that during the time of accident, the income tax exemption is up to Rs.2,50,000/-. The Tribunal has to deduct 10% of the income towards income tax for the amount beyond Rs.2,50,000/-. But, the Tribunal erroneously deducted income tax for the whole amount. Applying the above principle, the compensation arrived towards loss of income is

modified as follows:

Rs.23,89,104/- (Rs.26,39,104/- - Rs.2,50,000/-) - 10% of Rs.23,89,104 = Rs.21,50,193.60/- (rounded off to Rs.21,50,194/-)

The Tribunal has granted a sum of Rs.25,000/- towards loss of consortium to the first appellant, which is meager and the same is hereby enhanced to Rs.40,000/-. The Tribunal has awarded excessive sum of Rs.25,000/- towards funeral expenses and the same is hereby reduced to Rs.15,000/-. The Tribunal has not granted any amount towards loss of estate. Therefore, a sum of Rs.15,000/- is granted by this Court towards loss of estate. The amounts awarded by the Tribunal towards loss of love and affection and medical bills are 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 income	20,09,740/-	21,50,194/-	enhanced
2.	Loss of consortium	25,000/-	40,000/-	enhanced
3.	Loss of love and affection	10,000/-	10,000/-	confirmed
4.	Medical bills	29,445/-	29,445/-	confirmed
5.	Funeral Expenses	25,000/-	15,000/-	reduced
6.	Loss of estate	-	15,000/-	granted
	Total	Rs.20,99,185/-	Rs.22,59,639/-	enhanced by Rs.1,60,454/-

9. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.20,99,185/- is hereby enhanced to Rs.22,59,639/- with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The second respondent-Insurance Company is directed to deposit the enhanced award amount now determined by this Court at the first instance and recover the same from the first respondent, 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 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. It is made clear that the appellants are not entitled to any interest for the delay period on the amount enhanced by this Court. The appellants are directed to pay the Court fee, if any for the enhanced award amount, now determined by this Court. No costs.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

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

2.The Section Officer,
VR Section,
High Court,
Madras.

+lcc to Mr.K.Kuppusamy, Advocate sr.32160

C.M.A.No.320 of 2018

cnr(co)
nr 20/11/2019

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