



IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 06.03.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.344 of 2018

1.Sellammal

2.Chandru

3.Selvamani

4.Geetha

5.Sneka

.. Appellants/Petitioners

Vs.

1.Annadurai

(R1 Set Exparte before the Tribunal hence
notice for R1 may be dispensed with for the time being)

2.The Manager,

The New India Assurance Company Limited,
Divisional Office, No.29, Paramathy Road,
Namakkal, Namakkal District - 637 001.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 31.08.2017 made in M.C.O.P.No.169 of 2016 on the file of the Motor Accident Claims Tribunal cum Principal District Court, Namakkal.

For Appellants : Mr.C.Kulanthaivel

For R2 : Ms.C.Sangamithirai

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 31.08.2017 made in M.C.O.P.No.169 of 2016 on the file of the Motor Accident Claims Tribunal cum Principal District Court, Namakkal.



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.169 of 2016 on the file of the Motor Accident Claims Tribunal cum Principal District Court, Namakkal. The appellants filed the said claim petition claiming a sum of Rs.30,00,000/- as compensation for the death of one Sekar, who died in the accident that took place on 16.12.2015. 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 Honda Shine bike belonging to 1st respondent and directed the 2nd respondent-Insurance Company being insurer of the said vehicle to pay a sum of Rs.6,04,000/- 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 Tribunal has failed to note the evidence of P.W.1, P.W.2 and Ex.P1-FIR with regard to nature of work and income of the deceased. The deceased was doing business of Tyre re-trading works and was earning a sum of Rs.20,000/- per month at the time of the accident. The Tribunal erred in fixing a meagre sum of Rs.6,000/- per month as notional income of the deceased. The deceased was aged 52 years at the time of the accident and the Tribunal has not awarded any amount towards future prospects. The amounts awarded by the Tribunal towards funeral expenses and loss of estate 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 failed to prove the nature of work, avocation, age and income of the deceased. In the absence of any material, the Tribunal has fixed notional income of the deceased at Rs.6,000/- per month. The amounts awarded by the Tribunal under different heads are not meagre. The appellants have not made out any case for enhancement of compensation 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.

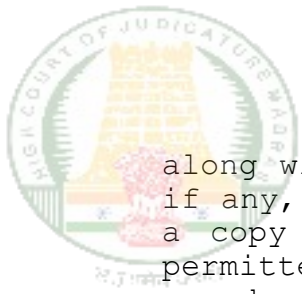
7.From the materials available on record, it is seen that the appellants have contended that the deceased was doing business of Tyre re-trading works and was earning a sum of Rs.20,000/- per month at the time of the accident. The



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. Considering Exs.P.12 and P.13, the Tribunal has fixed age of the deceased as 52 years at the time of accident. The accident is of the year 2015 and a sum of Rs.8,500/- per month is fixed as notional income of the deceased. The appellants are entitled to 10% enhancement towards future prospects. The Tribunal has applied multiplier '11'. The amount granted by the Tribunal towards loss of dependency is modified to Rs.9,25,650/- (Rs.8,500/- + 850 (Rs.8,500/- x 10%) 12 x 11 x 3/4). The amount granted by the Tribunal towards funeral expenses is meagre and the same is enhanced to Rs.15,000/-. The Tribunal has not awarded any amounts towards loss of consortium and loss of estate. A sum of Rs.40,000/- and Rs.15,000/- are granted towards loss of consortium and loss of estate. The amounts awarded by the Tribunal under other heads 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 dependency	5,94,000	9,25,650	Enhanced
2.	Funeral expenses	2,000	15,000	Enhanced
3.	Love and affection	5,000	5,000	Confirmed
4.	Transportation	2,000	2,000	Confirmed
5.	Loss of consortium	-	40,000	Granted
6.	Loss of estate	-	15,000	Granted
	Total	Rs.6,04,000/-	Rs.10,02,650/-	Enhanced by Rs.3,98,650/-

8. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.6,04,000/- is hereby enhanced to Rs.10,02,650/- 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 appellants 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. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

mtl

To

The Principal District Judge,
Motor Accidents Claims Tribunal,
Namakkal.

Copy To:

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

+lcc to Mr.C.Kulanthaivel, Advocate, S.R.No.20841
+lcc to Mrs.C.Sangamithirai, Advocate, S.R.No.20794

C.M.A.No.344 of 2018

EV(CO)

RRS(21/08/2019)