IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.532 of 2018

1.Sangeetha @ Parameshwari
2.Sinthuja (minor)
3.Akash (minor) .. Appellants
(minors rep. By their next friend
and mother, 1st appellant herein)

Vs.

1.Vignesh
2.Vengatesan
3.The Branch Manager,
The New India Assurance Co. Ltd.,
Karaikal. .. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 23.08.2017, made in M.C.O.P.No.70 of 2016, on the file of the District Court, (Motor Accident Claims Tribunal), Karaikal.

For Appellants : Mr.N.U.Prasanna

For R3 : Mr.R.Neethi Perumal

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellants/claimants seeking enhancement of the compensation granted by the Tribunal in the award dated 23.08.2017, made in M.C.O.P.No.70 of 2016, on the file of the District Court, (Motor Accident Claims Tribunal), Karaikal.

2.The appellants/claimants filed M.C.O.P.No.70 of 2016, on the file of the District Court, (Motor Accident Claims Tribunal), Karaikal, claiming a sum of Rs.23,00,000/- as compensation for the death of one Kalaivanan who died in the accident that took place on 09.01.2016.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the 1st respondent, driver of the lorry belonging to the 2nd respondent and directed the 3rd respondent to pay a sum of Rs.11,18,000/- as compensation to the appellants.

4.Not being satisfied with the amount granted by the Tribunal in the award dated 23.08.2017, made in M.C.O.P.No.70 of 2016, the appellants have come out with the present appeal.

5.The learned counsel appearing for the appellants contended that the deceased was working as a cashier and was earning a sum of Rs.15,000/- per month. The Tribunal without taking note of the documents filed to substantiate the same, fixed a meagre sum as monthly income of the deceased. The deceased was aged 49 years at the time of accident. The Tribunal erred in fixing the age of the deceased at 51 years merely relying on the post-mortem certificate, without considering the copies of transfer certificate and ration card produced to substantiate that the deceased was aged 49 years at the time of accident. In any event, the amounts granted by the Tribunal under different heads are meagre and prayed for enhancement of the compensation.

6.Per contra, the learned counsel appearing for the 3rd respondent-Insurance Company contended that the Tribunal taking note of the post-mortem certificate marked as Ex.P5, fixed the age of the deceased and granted compensation, adopting the multiplier method. The appellants have not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

7.Heard the learned counsel appearing for the appellants as well as the 3rd respondent and perused the materials available on record.

8.From the award of the Tribunal, it is seen that according to the appellants, the deceased was working as a cashier and earning a sum of Rs.15,000/- per month. The Tribunal erroneously fixed a sum of Rs.10,000/- per month as the notional income of the deceased. Considering the evidence of P.W.3, an employee in the office in which the deceased worked and in the absence of salary certificate to prove the income of the deceased, monthly income of the deceased is fixed at Rs.12,000/-. The learned counsel appearing for the appellants produced Ex.P14, copy of Transfer Certificate, showing the date of birth of the deceased as 30.05.1964 and contended that on the date of accident i.e., on 09.01.2016, the deceased was aged 49 years. The Tribunal failed to consider Ex.P14-Transfer Certificate and erroneously fixed the age of the deceased as 51 years, taking into consideration the post-mortem report. The same is not correct. The age of the deceased is fixed as 49 years as per the Transfer Certificate. The appellants are entitled to 25% future prospects. Hence, applying the multiplier '13' and deducting 1/3rd towards the personal expenses of the deceased, the compensation granted towards loss of income is modified to Rs.15,60,000/- {[Rs.12,000/- + Rs.3,000/- (25% of Rs.12,000/-)] x 12 x 13 x 2/3}. The Tribunal has granted excessive amount as compensation towards loss of consortium and loss of love and affection. Hence, the amount granted towards loss of love and affection is set aside and the amount awarded towards loss of consortium is reduced to a sum of Rs.40,000/-. The amount granted towards funeral expenses is very meagre. Hence, the same is enhanced to Rs.15,000/-. The Tribunal failed to grant any amount towards loss of estate. The appellants are entitled to a sum of Rs.15,000/- towards loss of estate. The amounts granted by the Tribunal under the head, transportation is just and reasonable and hence, the same is 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.	Loss of income	8,80,000/-	15,60,000/-	enhanced
2.	Loss of consortium	75,000/-	40,000/-	Reduced
3.	Loss of love and affection	1,50,000/-	-	Set aside
4.	Transportation	3,000/-	3,000/-	Confirmed
5.	Funeral expenses	10,000/-	15,000/-	Enhanced
6.	Loss of estate	-	15,000/-	Granted
	Total	11,18,000/-	16,33,000/-	Enhanced by Rs.5,15,000/-

9.In the result, the appeal is partly allowed and award granted by the Tribunal at Rs.11,18,000/- is enhanced to Rs.16,33,000/- along with interest and costs. The 3rd respondent is directed to deposit the enhanced award amount along with interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.70 of 2016. On such deposit, the 1st appellant/1st claimant is permitted to withdraw her share of the enhanced award amount along with interest and costs, as per the ratio of apportionment fixed by the Tribunal, less the amount already withdrawn if any, by filing necessary application before the

Tribunal. The shares of the minor appellants 2 and 3 are directed to be deposited in any of the Nationalized Bank, till the minors attain majority. The 1st appellant/mother of the minor appellants 2 and 3 is permitted to withdraw the accrued interest, once in three months for the welfare of the minor appellants 2 and 3. No costs.

Sd/-
Assistant Registrar(CS-VIII)

//True copy//

Sub Assistant Registrar

gsa

To
1.The District Judge,
(Motor Accident Claims Tribunal),
Karaikal.

2.The Section Officer,
V.R. Section,
High Court, Madras.

+1cc to Mr.R.Neethi Perumal, Advocate SR.No.21354

+1cc to Mr.T.Saikrishnan, Advocate SR.No.21602

C.M.A.No.532 of 2018

PP(CO)
GMY(10/12/2019)