

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.563 of 2018

Lakshmi

.. Appellant / Claimant

Vs.

1. Thirunavukkarasu

2. The New India Assurance Co. Ltd.,
Gandhi Road,
Kancheepuram.

.. Respondents / Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 31.07.2017, made in M.C.O.P.No.34 of 2014, on the file of the Sub Court, (Motor Accident Claims Tribunal), Madurantagam.

For Appellant : Mr.K.Govi Ganesan

For R1 : No appearance

For R2 : Mr.K.Thirunavukkarasu

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant-claimant, seeking enhancement of the compensation granted by the award dated 31.07.2017, made in M.C.O.P.No.34 of 2014, on the file of the Sub Court, (Motor Accident Claims Tribunal), Madurantagam.

2.The appellant-claimant filed M.C.O.P.No.34 of 2014, on the file of the Sub Court, (Motor Accident Claims Tribunal), Madurantagam, claiming a sum of Rs.5,00,000/- as compensation for the death of one K.Shanmugam who died in the accident that took place on 31.08.2013.

3.The Tribunal considering the pleadings, oral and documentary evidence, awarded a sum of Rs.1,65,000/- as compensation to the appellant and directed the 2nd respondent-Insurance Company to pay the same.

4. Not being satisfied with the amounts granted by the Tribunal in the award dated 31.07.2017, made in M.C.O.P.No.34 of 2014, the appellant has come out with the present appeal.

5. The learned counsel appearing for the appellant contended that the deceased was working in a Private Company and due to the injuries caused in the accident, he died at the age of 36 years. The appellant, mother of the deceased lost her only son and her husband also pre-deceased. The total compensation awarded by the Tribunal is meagre and prayed for enhancement of the compensation.

6. Per contra, Mr.K.Tirunavukkarasu, learned counsel appearing for the 2nd respondent-Insurance Company contended that the appellant has not proved the avocation and income of the deceased. In the absence of material evidence, the Tribunal has fixed a sum of Rs.15,000/- per annum as the income and granted compensation. The appellant has filed claim petition under Section 163-A of the Motor Vehicles Act. The appellant has 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 appellant as well as the 2nd respondent and perused the materials available on record. Though notice has been served on the 1st respondent and his name is printed in the cause list, there is no representation for him either in person or through counsel.

8. From the materials on record, it is seen that the appellant contended that her son was working in a private concern and to prove the same and income earned by the deceased, she has not filed any document. In the absence of any material evidence, the Tribunal has fixed a sum of Rs.15,000/- per annum as the notional income of the deceased. The accident is of the year 2013. The deceased was aged 36 years at the time of accident. Considering the age and date of accident, the notional income fixed by the Tribunal is meagre. A sum of Rs.3,300/- per month is fixed as the notional income of the deceased. Deducting 1/3rd towards the personal expenses of the deceased and applying the multiplier '16', the amounts granted by the Tribunal for loss of income is modified to Rs.4,22,400/- [Rs.3,300/- x 12 x 16 x 2/3]. The amounts granted by the Tribunal for loss of love and affection is set aside. The Tribunal has not awarded any amount for loss of estate and funeral expenses. Hence, a sum of Rs.2,500/- and Rs.2,000/- are granted towards the said heads respectively. 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	1,60,000/-	4,22,400/-	enhanced
2.	Loss of love and affection	5,000/-	-	set aside
3.	Loss of estate	-	2,500/-	granted
4.	Funeral expenses	-	2,000/-	granted
	Total	1,65,000/-	4,26,900/-	Enhanced by Rs.2,61,900/-

9. In the result, the appeal is partly allowed and compensation granted by the Tribunal at Rs.1,65,000/- is enhanced to Rs.4,26,900/- along with interest and costs. The 2nd 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.34 of 2014. On such deposit, the appellant/claimant is permitted to withdraw the enhanced award amount along with interest and costs, less the amount already withdrawn if any, by filing necessary application before the Tribunal. The appellant is directed to pay difference in Court fee within a period of two weeks from the date of receipt of a copy of this judgment. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

gsa

Sub Assistant Registrar

To

1. The Subordinate Judge,
(Motor Accident Claims Tribunal), Madurantagam.
2. The Section Officer,
V.R Section, High Court, Madras.

+1 cc to Mr.K.Govi Ganesan, Advocate, S.R.No.32994

C.M.A.No.563 of 2018

KK(CO) //SSM(07/11/2019)