

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.622 of 2018

1.C.Tamilselvi

2.C.Andichamy

3.P.Mayil

.. Appellants

Vs.

1.The Correspondent Gayathiri,
Matriculation Higher Secondary School,
V.O.C.Nagar,
Gayathiri Nagar,
Chinnamanur Post,
Uthamapalayam Taluk,
Theni District - 625 515.

(R1-Exparte in lower court
Notice to R1 may be dispensed with)

2.The National Insurance Co. Ltd.,
Third Party Claims Office, III-Floor,
No.751, Anna Salai,
Chennai - 600 002.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 24.10.2017 made in M.C.O.P.No.7353 of 2015 on the file of the Motor Accident Claims Tribunal, Chief Judge, Court of Small Causes, Chennai-104.

For Appellants : Mr.C.Richard Sureshkumar
for Mr.G.Mannar Mannan

For R2 : Mr.R.Ravichadran

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 24.10.2017 made in

M.C.O.P.No.7353 of 2015 on the file of the Motor Accident Claims Tribunal, Chief Judge, Court of Small Causes, Chennai-104.

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.7353 of 2015 on the file of the Motor Accident Claims Tribunal, Chief Judge, Court of Small Causes, Chennai-104. The appellants filed the said claim petition claiming a sum of Rs.45,00,000/- as compensation for the death of one Chandran, who died in the accident that took place on 14.07.2015. 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 school bus belonging to 1st respondent and directed the 2nd respondent-Insurance Company being insurer of the said bus to pay a sum of Rs.12,71,704/- 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 deceased was owning Cardamam Estate in Kerala and was earning a sum of Rs.25,000/- per month. The appellants have filed Ex.P7 to Ex.P9 to prove that the deceased was owning Cardamon estate. The Tribunal failed to consider the evidence of P.W.1, son of the deceased who had clearly deposed that only the deceased was looking after the business. The Tribunal erred in fixing a meagre sum of Rs.8,000/- as notional income of the deceased. The Tribunal applied multiplier '13' instead of '15'. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

5.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the age, income and occupation of the deceased as stated by the appellants are not true. The appellants have to prove that they are the legal heirs of the deceased. The amounts awarded by the Tribunal under different heads are not meagre 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 aged 45 years at the time of accident. The Tribunal fixed the age of the deceased at 48 years as per postmortem certificate and applied

multiplier '13'. The same is proper. The accident is of the year 2015. The appellants have contended that the deceased was owning Cardamam Plant in Kerala and was earning a sum of Rs.25,000/- per month. In the absence of any materials to prove the income of the deceased, the Tribunal has fixed notional income of the deceased at Rs.8,000/- per month, which is meagre and notional income of the deceased is fixed at Rs.12,000/- per month. The Tribunal erroneously granted 30% enhancement towards future prospects but the appellants are entitled only for 25% enhancement and hence, the same is reduced to 25%. The amount granted by the Tribunal towards loss of income is modified to Rs.15,60,000/- [(Rs.12,000/- + 3,000) (25% of Rs.12,000/-) x 12 x 13 x 2/3)]. The Tribunal has awarded a sum of Rs.1,00,000/- towards loss of consortium and loss of love and affection to the 1st appellant which is excessive and hence, the same is reduced to Rs.40,000/-. The Tribunal has awarded a sum of Rs.25,000/- towards funeral expenses and the same is reduced to Rs.15,000/-. The Tribunal has not awarded any amount towards loss of estate. Hence, sum of Rs.15,000/- is granted towards 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 income	10,81,704	15,60,000	Enhanced
2.	Loss of consortium and loss of love and affection to the 1 st appellant	1,00,000	40,000	Reduced
3.	Loss of love and affection to the 2 nd appellant	50,000	50,000	Confirmed
4.	Loss of love and affection to the 3 rd appellant	10,000	10,000	Confirmed
5.	Transport charges	5,000	5,000	Confirmed

6.	Funeral expenses	25,000	15,000	Reduced
4.	Loss of estate	-	15,000	Granted
	Total	Rs.12,71,704/-	Rs.16,95,000/-	Enhanced by Rs.4,23,296/-

8.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.12,71,704/- is hereby enhanced to Rs.16,95,000/- 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/claimants 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 (CS-VI)

//True Copy//

mtl

Sub Assistant Registrar

To

1.The Chief Judge,
Court of Small Causes,
Motor Accidents Claims Tribunal,
Chennai-104.

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

+1 cc to Mr.Mannar Mannan, Advocate, S.R.No.24429

+1 cc to Mr.R.Ravichandran, Advocate, S.R.No.24843

C.M.A.No.622 of 2018

(CO)
SSM(23/07/2019)