IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.696 of 2018

1.V.Umavathy

2.V.Shamesh (minor)

3.V.Mithishkumar (minor)
(Minors represented by their mother and
Natural guardian V.Umavathy)

4.V.Loganathan ... Appellants

Vs.

1.S.Victor
(R1 remained ex-parte in Lower Court)

2.Cholamandalam MS General Insurance Co, Ltd
"Dare House", 2nd floor, N.S.C.Bose Road,
Chennai - 600 001.

3.S.Jayakumar ... Respondents
(R3 remained ex-parte in Lower Court)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 19.08.2016 made in M.C.O.P.No.4020 of 2013 on the file of the Motor Accident Claims Tribunal, Chief Judge, Small Causes Court, Chennai.

For Appellant : M/s.Mira Aurobindu cumar

For R2 : Mrs.C.Harini
for M/s.M.B.Gopalan Associates

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 19.08.2016 made in M.C.O.P.No.4020 of 2013 on the file of the Motor Accident Claims Tribunal, Chief Judge, Small Causes Court, Chennai.

2.The appellants are claimants in M.C.O.P.No.4020 of 2013 on the file of the Motor Accident Claims Tribunal, Chief Judge, Small Causes Court, Chennai. They filed the said claim petition claiming a sum of Rs.40,00,000/- as compensation for the death of one Venkateshkumar, who died in the accident that took place on 10.03.2013. 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 car belonging to 1st and 3rd respondents and directed the 2nd respondent/Insurance Company being insurer of the said car to pay a sum of Rs.21,95,000/- 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.

3.The learned counsel appearing for the appellants contended that the Tribunal failed to note that the deceased worked in Singapore during 2004 to 2009 and in future, he would have got job based on work and experience. The accident has occurred in the year 2013. As per the latest judgment, a sum of Rs.12,000/- has to be fixed as monthly income of the deceased for the accident occurred from the year 2012 onwards. The Tribunal failed to note that the deceased has got monthly salary of Rs.11,170/- in the year 2012 and the Tribunal ought to have fixed monthly salary accepting Ex.P9/pass book of the deceased. The Tribunal ought to have granted compensation of Rs.1,00,000/- each towards loss of love and affection for minor appellants. The amounts awarded by the Tribunal under other heads are meagre and prayed for enhancement of compensation.

4.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that based on the evidence let in by the appellants with regard to salary of the deceased, the Tribunal fixed notional income of the deceased at Rs.10,000/- per month, which is proper. The deceased was aged 36 years at the time of the accident. The appellants are entitled to only 40% enhancement towards future prospects. The Tribunal has granted 50% enhancement towards future prospects. A sum of Rs.1,00,000/- awarded by the Tribunal towards loss of consortium to the 1st appellant is excessive. In addition to the said amount, the Tribunal has also awarded a sum of Rs.10,000/- to the 1st appellant towards loss of love & affection and the same is erroneous. A sum of Rs.25,000/- awarded by the Tribunal towards funeral expenses is also excessive. In view of the same, the appellants have not made out any case for enhancement and prayed for dismissal of the appeal.

5.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.

6.The contention of the learned counsel appearing for the appellants is that the deceased worked in Singapore during 2004 to 2009 and had work experience, would have got job in abroad and earned more. From the materials available on record, it is seen that the deceased was working in India at the time of the accident. According to the appellants, the deceased was working as a welder in M/s.Diamond Group and was earning a sum of Rs.12,182/- per month. They have produced Ex.P9-passbook of the deceased to substantiate the said claim. The Tribunal took note of the fact that in Ex.P9, entries were there with regard to salary only up to March 2012, whereas the accident has occurred on 10.03.2013. P.W.1 in her evidence has deposed that the deceased was earning a sum of Rs.10,650/- per month at the time of the accident. The Tribunal considering Ex.P9 where there is no entry after March 2012 and the evidence of P.W.1, fixed notional income of the deceased at Rs.10,000/- per month. The same is not meagre. The deceased was aged 36 years at the time of the accident. The appellants are entitled to only 40% enhancement towards future prospects. The Tribunal has erroneously granted 50% enhancement towards future prospects. In addition to that, the Tribunal has also granted excessive amount of Rs.1,00,000/- towards loss of consortium to the 1st appellant and Rs.25,000/- towards funeral expenses. In addition to that, a sum of Rs.10,000/- is also granted to the 1st appellant towards loss of love and affection. A reading of the award shows that the Tribunal has awarded excessive amounts to the appellants. In view of the same, the appellants are not entitled to any enhancement of compensation.

7.In the result, this Civil Miscellaneous Appeal is dismissed and the sum of Rs.21,95,000/- awarded by the Tribunal as compensation to the appellants/claimants, along with interest and costs is confirmed. The 2nd respondent/Insurance Company is directed to deposit the award amount 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 to the credit of M.C.O.P.No.4020 of 2013. On such deposit, the appellants 1 & 4 are permitted to withdraw their respective share of the award amount, on the basis of apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn. The share of the minor appellants 2 & 3 are directed to be deposited in any one of the Nationalised Banks till the minors attain majority. The 1st appellant being the mother of the appellants 2 & 3/minors is permitted to withdraw the accrued interest once in three months for the welfare of the minors. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

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

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

+1cc to Mr.Viswanatha Rao, Advocate Sr.33157
+1cc to M/s.M.B.Gopalan, Advocate Sr.33669

mg[co]
srg 18/07/2019