

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.03.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.736 of 2018

1.N.Adhikesavan

2.Vasanth

.. Appellants/Petitioners

Vs.

1.D.Dhanesh

2.ICICI Lombard Motor Insurance Company Limited,
No.84/85, Walltax Road,
Chennai - 600 003.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 16.09.2013 made in M.C.O.P.No.2675 of 2010 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai.

For Appellants : Ms.A.Subadra for
Ms.M.Malar

For R2 : Mrs.R.Sree Vidhya

R1 : Set Exparte

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation of the award dated 16.09.2013 made in M.C.O.P.No.2675 of 2010 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai.

2.The appellants are the claimants in M.C.O.P.No.2675 of 2010 on the file of the Motor Accident Claims Tribunal, III

Small Causes Court, Chennai. They filed the above said claim petition, claiming a sum of Rs.12,00,000/- as compensation for the death of one Mari, who died in the accident that took place on 10.04.2010.

3.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 lorry belonging to the first respondent and directed the second respondent-Insurance Company to pay a sum of Rs.5,83,000/- as compensation to the appellants.

4.Not being satisfied with the amount granted by the Tribunal, the appellants have come out with the present appeal seeking enhancement of compensation.

5.The learned counsel appearing for the appellants contended that the deceased was working as a supervisor in J.K.M.Manpower Supplier, M.M.Nagar and was earning a sum of Rs.10,000/- per month. To prove the income of the deceased, the appellant produced Ex.P6/salary certificate. But the Tribunal erroneously fixed monthly income of the deceased at Rs.8,000/- and granted compensation towards pecuniary loss, which is meager. The Tribunal has not granted any enhancement towards future prospects. The deceased was aged 28 years at the time of accident and the correct multiplier applicable is '17' but the Tribunal erroneously applied multiplier '11'. The compensation awarded by the Tribunal towards loss of love and affection is meager. The Tribunal has not granted any amount towards loss of estate and prayed for enhancement of compensation.

6.Per contra, Mrs.R.Sree Vidhya, learned counsel appearing for the second respondent-Insurance Company contended that the Tribunal rightly fixed a sum of Rs.8,000/- as monthly income of the deceased and granted compensation towards pecuniary loss, which is not meager. The amount awarded by the Tribunal under other heads are not meager and prayed for dismissal of the appeal.

7.I have heard the learned counsel appearing for the appellants as well as the second respondent and perused entire materials on record.

8. From the materials available on record it is seen that the appellants have contended that the deceased was working as a supervisor in J.K.M.Manpower Supplier, M.M.Nagar and was earning a sum of Rs.10,000/- per month. To substantiate the same, they produced Ex.P6/salary certificate. The Tribunal fixed a sum of Rs.8,000/- as monthly income, which is not meager. The deceased was aged 28 years at the time of accident and the Tribunal has not granted any enhancement towards future prospects. The appellants are entitled to 40% enhancement towards future prospects. The correct multiplier applicable is '17' and the Tribunal erroneously applied multiplier '11'. In view of the above, the amount awarded by the Tribunal towards pecuniary loss is modified to Rs.11,42,400/- [Rs.8,000/- + Rs.3,200/- (40% of Rs.8,000/-) X 12 X 17 X 1/2]. The Tribunal has awarded a sum of Rs.40,000/- towards loss of love and affection, which is meager and the same is hereby enhanced to Rs.80,000/-. A sum of Rs.15,000/- awarded by the Tribunal towards funeral expenses is hereby confirmed. The Tribunal has not awarded any amount towards loss of estate and a sum of Rs.15,000/- is granted by this Court towards loss of estate. 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.	Pecuniary loss	5,28,000/-	11,42,400/-	enhanced
2.	Funeral expenses	15,000/-	15,000/-	confirmed
3.	Loss of love and affection	40,000/-	80,000/-	enhanced
4.	Loss of estate	-	15,000/-	granted
	Total	Rs.5,83,000/-	Rs.12,52,400/-	enhanced by Rs.6,69,400/-

9. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.5,83,000/- is hereby enhanced to Rs.12,52,400/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellants are directed to pay the Court fee, if any, for the enhanced award amount now determined by this Court. It is made clear that the appellants shall not be entitled to any interest for the delay period in filing the appeal on the amount of Rs.6,69,400/- enhanced by this Court. The second 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, appellants are permitted to withdraw their respective share of the enhanced award amount now determined by this Court, as per the ratio of apportionment fixed by the Tribunal, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. No costs.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

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To

1. The III Judge,
Motor Accident Claims Tribunal,
Small Causes Court,
Chennai.

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

+1 CC to M/s.R. Sreevidya, Advocate sr 25084.

+1 CC to M/s.M.Malar, Advocate sr 26915.

C.M.A.No.736 of 2018

GP (CO)
SP (04/10/2019)

सत्यमेव जयते

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