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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.936 of 2018

1.S.Sobhana
2.S.Gangesh
3.S.Pradish
4.S.Ciriesh

.. Appellants/Petitioner

Vs.

1. Sudharshan Vishvanath Gupth

2. The ICICI Lombard General Insurance Co. Ltd.,
142, 1st Floor, ECR Main Road,
Pondicherry -1.

.. Respondents/Respondents

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 07.03.2015, made in M.C.O.P.No.775 of 2013, on the file of the II Additional District Court, (Motor Accident Claims Tribunal), Poonamallee.

For Appellants : Mr.V.Suman
for M/s.M.Malar

For R2 : Ms.R.Sreevidhya

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 award dated 07.03.2015, made in M.C.O.P.No.775 of 2013, on the file of the II Additional District Court, (Motor Accident Claims Tribunal), Poonamallee.

2.The appellants-claimants filed M.C.O.P.No.775 of 2013, on the file of the II Additional District Court, (Motor Accident Claims Tribunal), Poonamallee, claiming a sum of Rs.7,00,000/- as compensation for the death of one S.Sreedharan, who died in the accident that took place on 22.08.2013.



3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the rider of the motorcycle belonging to the 1st respondent and directed the 2nd respondent-Insurance Company to pay a sum of Rs.3,11,400/- as compensation to the appellants.

4.Not being satisfied with the amounts granted by the Tribunal in the award dated 07.03.2015, made in M.C.O.P.No.775 of 2013, 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 tailor and was earning a sum of Rs.500/- per day. The Tribunal erroneously fixed a meagre sum of Rs.6,000/- per month as the notional income of the appellant and granted compensation towards loss of income. The compensation granted by the Tribunal towards funeral expenses, loss of love and affection and transportation charges are meagre. The Tribunal ought to have awarded some amount under the head mental agony. In any event, the total compensation granted by the Tribunal is meagre and prayed for enhancement of the compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the appellants have not filed any document with regard to age, avocation and income of the deceased. In view of the absence of material evidence, the Tribunal has correctly fixed the notional income of the deceased at Rs.6,000/- per month and awarded compensation which are not meagre. 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 2nd respondent and perused the materials available on record.

8.From the materials on record, it is seen that the appellants have contended that the deceased was aged 72 years and was a tailor and was earning a sum of Rs.500/- per day. The appellants have not filed any document to prove the same. In the absence of material evidence, the Tribunal fixed a sum of Rs.6,000/- per month as the notional income of the deceased. The accident is of the year 2013. The notional income fixed by the Tribunal is meagre. A sum of Rs.8,000/- is fixed as the notional income of the deceased. Applying the multiplier '5' and deducting 1/3rd towards the personal expenses of the deceased, the amount granted by the Tribunal towards loss of income is



modified to Rs.3,20,000/- [Rs.8,000/- x 12 x 5 x 2/3]. The Tribunal has granted meagre amount towards loss of consortium, loss of love and affection, damages to clothes and funeral expenses. The same are enhanced to Rs.15,000/- towards funeral expenses, Rs.40,000/- towards loss of consortium, Rs.60,000/- towards loss of love and affection and Rs.2,000/- towards the damages to clothes. The amounts granted by the Tribunal under other heads are just and reasonable and the same 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	2,40,000/-	3,20,000/-	Enhanced
2.	Funeral expenses	10,000/-	15,000/-	Enhanced
3.	Loss of love and affection	15,000/-	60,000/-	Enhanced
4.	Transportation	5,000/-	5,000/-	Confirmed
5.	Loss of consortium	10,000/-	40,000/-	Enhanced
6.	Damages to clothes	1,000/-	2,000/-	Enhanced
7.	Medical expenses	30,400/-	30,400/-	Confirmed
	Total	3,11,400/-	4,72,400/-	Enhanced by Rs.1,61,000/-

9.In the result, the appeal is partly allowed and the compensation granted by the Tribunal at Rs.3,11,400/- is enhanced to Rs.4,72,400/- along with interest and costs. The 2nd respondent-Insurance Company 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.775 of 2013. On such deposit, the appellants/claimants are permitted to withdraw their 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. No costs. The appellants are directed to pay the necessary Court fee, if any, for the amount now enhanced by this Court. No costs.

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Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

gsa

To

1. The II Additional District Judge,
(Motor Accident Claims Tribunal),
Poonamallee.
2. The Section Officer,
V.R Section,
High Court, Madras.

+1cc to M/s.M.Malar, Advocate, S.R.No.43022
+1cc to Ms.R.Sreevidhya, Advocate, S.R.No.42797

C.M.A.No.936 of 2018

VBA(CO)
CS/03/12/2019