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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.02.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2218 of 2017

Maheshwari

... Appellant

Vs.

1.Kalimuthu
2.Pandiyaraj
3.Manokaran

4.The Oriental Insurance Company Ltd.,
No.1024-J-Sri Vijay Complex, IInd Floor,
Opp. to bus stand, Cumbum road,
Theni - 625 531.

... Respondents

(Since the quantum alone seeking enhancement, and the respondents 1 to 3 are remained ex parte before the tribunal, hence notice may be dispense with)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 14.03.2017 made in M.C.O.P.No.294 of 2012 on the file of Motor Accident Claims Tribunal, Sub Court at Sathyamangalam.

For Appellant	:	Mr.MA.P.Thangavel
For R2	:	Mr.S.Kadarkarai
For R4	:	Mr.M.Krishnamoorthy

J U D G M E N T

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 14.03.2017 made in M.C.O.P.No.294 of 2012 on the file of Motor Accident Claims Tribunal, Sub Court at Sathyamangalam.

2.The appellant is claimant in M.C.O.P.No.294 of 2012 on the file of Motor Accident Claims Tribunal, Sub Court at Sathyamangalam. she filed the said claim petition claiming a sum of Rs.18,00,000/- as compensation for the death of her son Sakthivel, who died in the accident that took place on 10.05.2012. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the Tractor and



Tractor belonging to the respondents 2 and 3 and directed 4th respondent-Insurance Company being the insurer of the said Tractor and Tractor to pay a sum of Rs.5,57,000/- as compensation to the appellant, at the first instance and recover the same from the respondents 1 to 3. Not being satisfied with the above amount awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

3.The learned counsel appearing for the appellant/claimant contended that the deceased was a load man and the Tribunal erred in fixing a sum of Rs.3,000/- as notional income of the deceased. Normally the load man earns not less than Rs.350/- per day. The Tribunal failed to grant any enhancement for future prospects and Tribunal ought to have awarded Rs.5,00,000/- for loss of estate. The amount awarded by the Tribunal under different heads are meager and prayed for enhancement of compensation.

4.Per contra, Mr.M.Krishnamoorthy, the learned counsel appearing for the 4th respondent-Insurance Company contended that the appellant has not filed any document with regard to avocation and income of the deceased. In the absence of materials, the amount fixed by the Tribunal is not meager. The deceased was a bachelor. The Tribunal erred in deducting 1/3rd instead of 50%. The amount awarded by the Tribunal at Rs.1,00,000/- towards loss of love and affection and Rs.25,000/- towards funeral expenses are excessive and in view of the excessive amount granted and deduction of 1/3rd the appellant is not entitled for any enhancement and prayed for dismissal of the appeal.

5.Heard, the learned counsel appearing for the appellant as well as the learned counsel appearing for the 2nd respondent and 4th respondent-Insurance Company and perused all the materials available on record.

6.From the award of the Tribunal, it is seen that the appellant contended that her son was a load man and he was earning a sum of Rs.15,000/- per month. She has not filed any materials to substantiate the said claim. The Tribunal in the absence of any materials fixed a sum of Rs.3,000/- per month as notional income of the deceased. The accident has occurred in the year 2012. The amount fixed by the Tribunal as notional income is meager. A sum of Rs.6,500/- per month including future prospects is fixed as notional income of the deceased. The Tribunal erred in deducting 1/3rd instead of 50%. The amount awarded by the Tribunal towards loss of income is modified as follows:



(Rs.6,500/- x 12 x 18 x 1/2 =7,02,000)

The Tribunal has granted Rs.1,25,000/- under conventional head which is excessive. In view of the same, the appellant is not entitled for any amount for 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.	Loss of income	4,32,000	7,02,000	Enhanced
2.	Love and affection	1,00,000	1,00,000	Confirmed
3.	Funeral expenses	25,000	25,000	Confirmed
	Total	Rs.5,57,000/-	Rs.8,27,000/-	Enhanced by Rs.2,70,000/-

7. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.5,57,000/- is hereby enhanced to Rs.8,27,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant-claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. The 4th 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 appellant-claimant is permitted to withdraw the enhanced award amount along with interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar



gbi/mtl

To

WEB COPY

The Subordinate Judge,
Motor Accidents Claims Tribunal,
Sathyamangalam.

Copy to

The Section Officer,
V.R.Section,
High Court,
Madras. (2 copies)

+1cc to M/s.M.Krishnamoorthy, Advocate Sr.17693

+1cc to M/s.Ma.P.Thangavel, Advocate Sr.18421

C.M.A.No.2218 of 2017

rp[co]
srg 11/10/2019