

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.4687 of 2019

T.Mahendran (deceased)

1.M.Suseela

2.Shanthi

3.M.Sivakumar

... Appellants/petitioners

(Cause title accepted vide Court order dated 18.10.2019 made in C.M.P.No.22340 of 2019 in C.M.A.SR.No.128472 of 2019)

Vs.

1.A.Sekar

2.The Oriental Insurance Company Limited,

Bali Tower, First Floor,

No.1, Abdul Razaac Street,

Saidapet, Chennai - 600 015. ... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 22.04.2015 made in M.C.O.P.No.4682 of 2012 on the file of the Motor Accident Claims Tribunal, Chief Small Causes Court, Chennai.

For Appellants : Mr.K.Suryanarayanan

for Ms/.Amar Dineshbhai Pandiya

For R2

: Mr.K.Vinod

for M/s.Elveera Ravindran

J U D G M E N T
WEB COPY

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 22.04.2015 made in M.C.O.P.No.4682 of 2012 on the file of the Motor Accident Claims Tribunal, Chief Small Causes Court, Chennai.

2. By consent of both the parties, this Civil Miscellaneous Appeal is taken up for final disposal at the admission stage itself.

3. The second appellant and the deceased T.Mahendran are the claimants in M.C.O.P.No.4682 of 2012 on the file of the Motor Accident Claims Tribunal, Chief Small Causes Court, Chennai. They filed the above said claim petition, claiming a sum of Rs.60,00,000/- as compensation for the death of their son viz., M.Suseenthiran, who died in the accident that took place on 12.07.2012.

4. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving by the driver of the van belonging to the first respondent and directed the respondents 1 and 2 jointly and severally, being the owner and insurer of the van respectively to pay a sum of Rs.11,57,404/- as compensation to the appellants/claimants.

5. Not being satisfied with the amount awarded by the Tribunal, the appellants have come out with the present appeal.

6. The learned counsel appearing for the appellants contended that the deceased was working as an Executive support, H.R. Admin/Accounts in O.E.C. Records Management Company and was earning a sum of Rs.13,214/- per month. The Tribunal fixed monthly income of the deceased at Rs.9,513/- by taking only the basic pay and HRA. The Tribunal has not taken into account the Travelling Allowance, Educational Allowance and C.C.A and to prove the avocation and income of the deceased, the appellants examined P.W.4, Assistant Manager of O.E.C. Records Management Company. The deceased was aged 25 years at the time of accident and the Tribunal has not granted any enhancement towards future prospects of the deceased. The Tribunal has not granted any amount towards loss of estate and the amounts awarded by the Tribunal under different heads are meager and prayed for enhancement of compensation.

7. Per contra, the learned counsel appearing for the second respondent-Insurance Company contended that the accident took place in the year 2012 and the Tribunal rightly fixed a sum of Rs.9,513/- as monthly income of the deceased, by taking into account the basic pay and HRA. The Tribunal has awarded a sum of Rs.1,00,000/- towards loss of love and affection and Rs.25,000/- towards funeral expenses. In view of the excess amountss granted by the Tribunal towards loss of love and affection and funeral

expenses, the appellants are not entitled to any enhancement towards future prospects and the amounts awarded by the Tribunal under different heads are not meager and prayed for dismissal of the appeal.

8. Heard the learned counsel for the appellants as well as the second respondent and perused the entire materials on record.

9. From the materials available on record, it is seen that originally the first appellant along with deceased T.Mahendran filed the claim petition claiming compensation for the death of their son viz., M.Suseenthiran, who died in the accident. Pending numbering of the appeal, the first claimant, who is the father of the deceased M.Suseenthiran died. Therefore, the appellants 2 and 3, who are the daughter and another son of the deceased T.Mahendran were impleaded as his legal heirs. The contention of the appellants is that the deceased was working as an Executive support, H.R. Admin/Accounts in O.E.C. Records Management Company and was earning a sum of Rs.13,214/- per month. From the award of the Tribunal, it is seen that the Tribunal considering Exs.P18/appointment order and P19/ salary certificate of the deceased, fixed a sum of Rs.9,513/- as monthly income of the deceased without taking into consideration the Travelling allowance, Educational allowance and C.C.A. Therefore, the monthly income of the deceased fixed at Rs.9,513/- by the Tribunal is not correct. Considering the nature of work done by the deceased and the year of accident, a sum of Rs.13,000/- is fixed by this Court as monthly income of the deceased. The deceased was aged 25 years at the time of accident and the Tribunal has not granted any amount towards future prospects. The appellants are entitled to 40% enhancement towards future prospects. The deceased was a bachelor at the time of accident. Hence, the Tribunal has rightly deducted $\frac{1}{2}$ towards personal expenses of the deceased and the same is proper. Thus, the compensation towards pecuniary loss is hereby enhanced to Rs.19,65,600/- [Rs.18,200/- (Rs.13,000/- + 40% of Rs.13,000/-) X 12 X 18 X $\frac{1}{2}$]. The Tribunal has granted a sum of Rs.50,000/- each to the appellants 1 and 2 towards loss of love and affection and the same is meagre. The appellants including the third appellant are entitled to a sum of Rs.40,000/- each towards loss of love and affection. The Tribunal has awarded a sum of Rs.25,000/- towards funeral expenses, which is excessive and the same is hereby reduced to Rs.15,000/-. A sum of Rs.5,000/- awarded by the Tribunal towards transportation is reasonable and the same is confirmed. The Tribunal has not granted 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	10,27,404/-	19,65,600/-	Enhanced
2.	Loss of love and affection	1,00,000/-	1,20,000/-	Enhanced
3.	Funeral expenses	25,000/-	15,000/-	Reduced
4.	Transportation	5,000/-	5,000/-	Confirmed
5.	Loss of estate	-	15,000/-	Granted
	Total	Rs.11,57,404/-	Rs.21,20,600/-	enhanced by Rs.9,63,196/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.11,57,404/- is hereby enhanced to Rs.21,20,600/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The respondents 1 and 2 are jointly and severally 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 first appellant is permitted to withdraw a sum of Rs.10,60,800/- and the appellants 2 and 3 are permitted to withdraw a sum of Rs.5,30,400/- each as their respective shares of the enhanced compensation amount now determined by this Court, along with proportionate interest and costs, less the amount if any, already withdrawn, by making necessary applications before the Tribunal. It is made clear that the appellants shall not be entitled for any interest for Rs.9,63,196/- the amount now enhanced by this Court as per the order of this Court dated 25.11.2019 made in C.M.P.No.23709 of 2019 in C.M.A. (SR).No.128472 of 2019. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

krk

4/5

To

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

Copy to

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

+1 cc to Mr.Elveera Ravindran Advocate sr104166
+1 cc to Mr.Amar D.Pandiya Advocate sr103848

C.M.A.No.4687 of 2019

pm(co)
aa23/11/2020



WEB COPY