

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.03.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3445 of 2017 and
C.M.P.No.21862 of 2017

1.Sowrirajan
2.Vijayabharath
3.Ajay Srivatsan

.. Appellants

Vs.

1.Ram Kumar
2.Ravindran
3.The Branch Manager,
National Insurance Company Limited,
Mayiladuthurai.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 30.08.2017 made in M.C.O.P.No.59 of 2016 on the file of the Motor Accident Claims Tribunal, District Court, Karaikal.

For Appellants : Mr.V.Kumaravelan

For R3 : Mr.S.Arunkumar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation of the award dated 30.08.2017 made in M.C.O.P.No.59 of 2016 on the file of the Motor Accident Claims Tribunal, District Court, Karaikal.

2.The appellants are the claimants in M.C.O.P.No.59 of 2016 on the file of the Motor Accident Claims Tribunal, District Court, Karaikal. They filed the above said claim petition, claiming a sum of Rs.20,00,000/- as compensation for the death of one Vaidegi, who died in the accident that took place on 19.10.2015.

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 school bus, the

first respondent herein, belonging to the second respondent and directed the third respondent-Insurance Company to pay a sum of Rs.6,04,000/- 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 a cloth merchant and was earning a sum of Rs.500/- per day. The Tribunal erroneously fixed meager sum of Rs.6,500/- as monthly income of the deceased. The Tribunal has not granted any amount towards future prospects. The deceased was aged only 51 years. The Tribunal erroneously fixed age of the deceased at 56 years holding that age mentioned in the postmortem certificate tallies with the age mentioned in the Voter's Identity Card. Even as per Voter's Identity Card, the age of the deceased is only 54 years. The Tribunal ought to have applied multiplier '11' instead of '8'. The amount granted by the Tribunal under different heads are meager and prayed for enhancement of compensation.

6. Per contra, Mr.S.Arunkumar, learned counsel appearing for the third respondent-Insurance Company contended that the appellants have not substantiated their contention that deceased was doing business and was earning a sum of Rs.500/- per day. Even in the claim petition, the appellants have stated that the deceased was a house wife and cloth merchant and no details of income was given by the appellants. In the absence of any acceptable evidence, the Tribunal has rightly fixed monthly income of the deceased at Rs.6,500/-. The Tribunal has granted excessive amount towards loss of consortium and loss of love and affection. The appellants have not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

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

8. From the materials on record it is seen that it is the contention of the appellants that the deceased was buying clothes in Erode on whole sale and was selling in nearby villages and was earning a sum of Rs.500/- per day. The appellants have not substantiated the same. The Tribunal in the absence of material evidence fixed monthly income of the deceased at Rs.6,500/-. The accident occurred in the year 2015 and the monthly income fixed by the Tribunal is meager. A sum of Rs.9,000/- is fixed by this court as monthly income of the deceased. The appellants have contended that the deceased was

aged 51 years at the time of accident. They have marked Voter's Identity Card of the deceased as Ex.P12. In the postmortem report, the age of the deceased was mentioned as 56 years. The Voter's Identity Card was issued in the year 1994 and the age of the deceased was shown as 33 years. Calculating the age based on the Voter's Identity Card, the age of the deceased was only 54 years at the time of accident. The Tribunal wrongly calculated the age from Voter's Identity Card holding that age tallies with the age mentioned in the postmortem report and held that deceased was 56 years and applied multiplier '8'. The same is set aside. The age of the deceased is fixed at 54 years and the Tribunal has not granted any enhancement towards future prospects. The appellants are entitled to 10% enhancement towards future prospects and the correct multiplier applicable is '11'. The amount awarded by the Tribunal towards loss of income is modified to Rs.8,71,200/- [Rs.9,000/- + 10% of Rs.9,000/- X 12 X 11 X 2/3]. A sum of Rs.75,000/- granted by the Tribunal towards loss of consortium to the first appellant is excessive and the same is hereby reduced to Rs.40,000/-. The Tribunal has granted a meager sum of Rs.10,000/- towards funeral expenses and the same is hereby enhanced to Rs.15,000/-. The Tribunal has not granted any amount towards loss of estate. A sum of Rs.15,000/- is granted by this Court towards loss of estate. The amount awarded by the Tribunal under other heads 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	4,16,000/-	8,71,200/-	enhanced
2.	Loss of consortium	75,000/-	40,000/-	reduced
3.	Loss of love and affection	1,00,000/-	1,00,000/-	confirmed
4.	Transportation	3,000/-	3,000/-	confirmed
5.	Funeral expenses	10,000/-	15,000/-	enhanced
6.	Loss of estate	-	15,000/-	granted
	Total	Rs.6,04,000/-	Rs.10,44,200/-	enhanced by Rs.4,40,200/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.6,04,000/- is hereby enhanced to Rs.10,44,200/- 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 on the enhanced amount of compensation. The third 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 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. Consequently, the connected Miscellaneous Petition is dismissed.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

krk

To

The District Judge,
Motor Accident Claims Tribunal,
Karaikal.

Copy To : The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mr.V.Kumaravelan, Advocate SR.No.29519

+1cc to Mr.S.Arunkumar, Advocate SR.No.30047

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VSN II(CO)
GMY(03/10/2019)

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