

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.01.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.929 of 2017

1.S.Gopalakrishnan
2.Vijayalakshmi
3.Dhanalakshmi
4.Senthilkumar
5.Thanikachalam
6.Ezhilarasi

.. Appellants

Vs.

1.M/s.Vasantharaja Bus Service,
160, Natarajapriya Street,
Pudhucherry - 1.

2.United India Insurance Company,
Branch Office,
Pudhucherry.

.. Respondents

(No relief sought against the first respondent
hence notice may be dispensed with)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 26.10.2015 made in M.C.O.P.No.14 of 2014 on the file of the Motor Accident Claims Tribunal, Sub Court, Panruti, Cuddalore.

For Appellants : Mr.D.S.Thirumavalavan

For RR2 सत्यमेव जयते : Mr.P.Sankaranarayanan

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation of the award dated 26.10.2015 made in M.C.O.P.No.14 of 2014 on the file of the Motor Accident Claims Tribunal, Sub Court, Panruti, Cuddalore.

2.The appellants are claimants in M.C.O.P.No.14 of 2014 on the file of the Motor Accident Claims Tribunal, Sub Court, Panruti, Cuddalore. They filed the above claim petition claiming a sum of Rs.25,00,000/- as compensation for the death of one

Sivaprakasam, who died in the accident that took place on 05.10.2013.

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 bus belonging to the first respondent and directed the second respondent/Insurance Company to pay a sum of Rs.2,97,000/- as compensation to the appellants.

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

5.The learned counsel appearing for the appellants contended that the deceased was owning a lorry and JCB and was earning a sum of Rs.30,000/- per month. The appellants have produced statement of current Bank account details of the deceased to show the avocation and income of the deceased. The Tribunal erred in fixing meager amount of Rs.6,000/- as the notional income of the deceased per month. The deceased was aged 65 years at the time of accident and the Tribunal applied multiplier '5' instead of '7'. He further contended that amounts awarded by the Tribunal under different heads are meager and prayed for enhancement of compensation.

6.Per contra, the learned counsel appearing for the second respondent/Insurance Company contended that the appellants have not produced any document to show the avocation and income of the deceased and in the absence of documents, the notional income fixed by the Tribunal is proper. The amounts awarded by the Tribunal under other heads are also not meager. The appellants have not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

7.Heard the learned counsel appearing for the appellants as well as the second respondent and perused all the materials available on record.

8.The learned counsel appearing for the appellants contended that the deceased was owning lorry and JCB and was carrying on business as proprietor of 'Thanikachalam Traders' and was earning a sum of Rs.30,000/- per month. To substantiate the same, the appellants have produced statement of current Bank account details of the deceased. In the Bank statement, it was mentioned that the deceased was proprietor of 'Thanikachalam Traders'. From the Bank statement alone, the income of the deceased cannot be ascertained. The appellants have not produced any other documents i.e., Income Tax returns, to show the income of the deceased. In view of the same, the Tribunal has fixed a

sum of Rs.6,000/- per month as the notional income of the deceased. The accident occurred on 05.10.2013 and the notional income fixed by the Tribunal is meager and the same is hereby enhanced to a sum of Rs.9,000/- per month. The dependents are six in numbers, the Tribunal ought to have deducted 1/4th towards personal expenses. The deceased was aged 65 years and correct multiplier applicable is '7' as per 2009 (2) TNMAC 1 SC Supreme Court, Sarla Verma & others vs. Delhi Transport Corporation & another and not '5' as applied by the Tribunal. In view of the above facts, the amount awarded by the Tribunal with regard to loss of income is modified as follows:

$$\text{Rs.9,000/-} \times 12 \times 7 \times 3/4 = \text{Rs.5,67,000/-}$$

The amounts awarded by the Tribunal under other heads are set aside. The appellants are entitled to a sum of Rs.70,000/- under conventional heads in addition to the loss of income. 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/-	5,67,000/-	enhanced
2.	Transportation	10,000/-	-	set aside
3.	Damages to clothes	2,000/-	-	set aside
4.	Medical expenses	5,000/-	-	set aside
5.	Loss of mental agony	20,000/-	-	set aside
6.	Loss of estate	15,000/-	-	set aside
7.	Funeral expenses	5,000/-	-	set aside
8.	Conventional head	-	70,000/-	granted
	Total	2,97,000/-	6,37,000/-	enhanced by Rs.3,40,000/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,97,000/- is hereby enhanced to Rs.6,37,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The second respondent/Insurance Company is directed to deposit the enhanced award amount now determined by this Court 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/claimants are permitted to withdraw the enhanced award amount as per the ratio of apportionment fixed by the Tribunal along with interest and costs, less the amount if any, already withdrawn. No costs.

Sd/--
Assistant Registrar (CS V)

//True Copy//

Sub Assistant Registrar

krk

To

1.The Subordinate Judge,
Motor Accident Claims Tribunal,
Panruti, Cuddalore.

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

+1cc to Mr.S.Thirumavalavan, Advocate, S.R.No.649

+1cc to Mr.P.Sankaranarayanan, Advocate, S.R.No.110

C.M.A.No.929 of 2017

SSV(CO)
GN(28/05/2019)

सत्यमेव जयते

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