

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.4727 of 2019

1.Prabhu
2.Revathi

.. Appellants/Claimants

Vs.

1.P.Lingithan
2.United India Insurance Company Limited,
28, Meenakshi Complex, Mylam Road,
Tindivanam - 604 001,
Villupuram District.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 11.10.2019 made in M.C.O.P.No.742 of 2015 on the file of the Motor Accident Claims Tribunal, Sessions Court, Perambalur.

For Appellants : Ms.C.Sangamithirai
for Mr.C.Vidhusan

For R2 : Mr.J.Chandran

R1 Exparte

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 11.10.2019 made in M.C.O.P.No.742 of 2015 on the file of the Motor Accident Claims Tribunal, Sessions Court, Perambalur.

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

3.The appellants are the claimants in M.C.O.P.No.742 of 2015 on the file of the Motor Accident Claims Tribunal, Sessions Court, Perambalur. They filed the above said claim petition, claiming a sum of Rs.15,00,000/- as compensation for the death of their father viz., Rajendran, who died in the accident that took place on 24.12.2014.

4.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 lorry belonging to the first respondent and directed the second respondent, being the insurer of the lorry to pay a sum of Rs.6,10,800/- as compensation to the appellants.

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 a Driver and was earning a sum of Rs.16,000/- per month at the time of accident. The Tribunal erroneously fixed meagre sum of Rs.8,000/- as monthly income of the deceased. The deceased was married and appellants are son and daughter of the deceased. The Tribunal ought to have deducted 1/3rd towards personal expenses of the deceased, instead of deducting ½. The Tribunal has not granted any amount towards loss of love and affection. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

7.Per contra, Mr.J.Chandran, learned counsel appearing for the second respondent-Insurance Company contended that the appellants have not produced any document to prove the avocation and income of the deceased. In the absence of any material to prove the avocation and income of the deceased, the Tribunal fixed a sum of Rs.8,000/- as monthly income of the deceased and granted a sum of Rs.5,80,800/- towards loss of dependency, which is not meagre. The amounts awarded by the Tribunal under different heads are not meagre. The appellants have not made out any case for enhancement of compensation and hence they are not entitled for enhancement of compensation and prayed for dismissal of the appeal.

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

9.From the materials available on record, it is seen that the appellants have contended that the deceased was a Driver and was earning a sum of Rs.16,000/- per month at the time of accident. Except oral evidence, the appellants have not produced any document to prove the avocation and income of the deceased. In the absence of any material evidence to prove the avocation and income of the deceased, the Tribunal fixed a sum of Rs.8,000/- as notional income of the deceased per month. The accident occurred in the year 2014 and the monthly income of the deceased fixed by the Tribunal is meagre. Therefore, considering

the age and nature of work done by the deceased and the year of accident, a sum of Rs.10,000/- per month is fixed by this Court as notional income of the deceased. The deceased was aged 52 years at the time of accident and hence the Tribunal rightly granted 10% enhancement towards future prospects. The deceased was married and appellants are son and daughter of the deceased. The Tribunal erroneously deducted $\frac{1}{2}$ towards personal expenses of the deceased instead of $\frac{1}{3}$ rd. Therefore, fixing the monthly income of the deceased at Rs.10,000/- and adding 10% enhancement towards future prospects and after deducting $\frac{1}{3}$ rd towards the personal expenses of the deceased, the compensation awarded by the Tribunal towards loss of dependency is hereby enhanced to Rs.9,68,000/- {Rs.11,000/- [Rs.10,000/- + Rs.1,000/- (10% of Rs.10,000/-)] x 12 X 11 x $\frac{2}{3}$ }. From the award of the Tribunal, it is seen that the Tribunal has not awarded any amount towards loss of love and affection. Therefore a sum of Rs.40,000/- is granted by this Court towards loss of love and affection to the appellants. The Tribunal has awarded a sum of Rs.15,000/- each towards loss of estate and funeral expenses and the same are just and reasonable and hence they are confirmed by this Court. 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 dependency	5,80,800/-	9,68,000/-	Enhanced
2.	Funeral expenses	15,000/-	15,000/-	Confirmed
3.	Loss of estate	15,000/-	15,000/-	Confirmed
4.	Loss of love and affection	-	40,000/-	Granted
	Total	Rs.6,10,800/-	Rs.10,38,000/-	enhanced by Rs.4,27,200/-

10. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.6,10,800/- is hereby enhanced to Rs.10,38,000/- 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 now determined by this Court. The second 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 to the credit of M.C.O.P.No.742 of 2015 on the file of the Motor Accident Claims Tribunal, Sessions Court, Perambalur. 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 proportionate interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. No costs.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The Sessions Judge,
Motor Accident Claims Tribunal,
Perambalur.

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

+lcc to Mr.J.Chandran, Advocate, S.R.No.104994

+lcc to Mr.C.Vidhusan, Advocate, S.R.No. 104241

C.M.A.No.4727 of 2019

SV(CO)
GN(15/09/2020)

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