

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.03.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2268 of 2018

1.Muthuraakku
2.Minor Hema Devi
3.Minor Raja
(minors rep. By their guardian, Muthuraakku)
4.Pethansamy .. Appellants

Vs.

1.Chandra Sekar
2.Jeyakrishnan
3.General Reliance Insurance Co. Ltd.,
Rep. By its Branch Manager,
No.141/71, 1st Floor, Gee Jay Arcade,
Thiruvengadasamy Road, West Coimbatore,
Coimbatore District.
4.Karuppaaiah .. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 10.04.2018, made in M.C.O.P.No.215 of 2012, on the file of the Principal Sub Judge, (Motor Accident Claims Tribunal), Tiruppur.

For Appellant : Mr.K.Sudhakar

For R3 सत्यमेव जयते : Ms.C.Bhuvanasundari

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellants/claimants seeking enhancement of the compensation granted by the Tribunal in the award dated 10.04.2018, made in M.C.O.P.No.215 of 2012, on the file of the Principal Sub Court, (Motor Accident Claims Tribunal), Tiruppur.

2.The appellants/claimants filed M.C.O.P.No.215 of 2012, on the file of the Principal Sub Court, (Motor Accident Claims

Tribunal), Tiruppur, claiming a sum of Rs.20,00,000/- as compensation for the death of one Murugan, who died in the accident that took place on 21.06.2011.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the 1st respondent, rider of the motorcycle belonging to the 2nd respondent and directed the 3rd respondent-Insurance Company as insurer of the motorcycle to pay a sum of Rs.11,72,600/- as compensation to the appellants at the first instance and recover the same from the 2nd respondent.

4.Not being satisfied with the amount granted by the Tribunal in the award dated 10.04.2018, made in M.C.O.P.No.215 of 2012, the appellants have come out with the present appeal.

5.The learned counsel appearing for the appellants contended that the deceased was doing machine printing works and was earning a sum of Rs.300/- per day. The Tribunal without considering the evidence of P.W.2, erroneously fixed a sum of Rs.6,000/- as the monthly income of the deceased, which is very meagre. The appellants have proved the income of the deceased by examining P.W.2 and in the absence of any evidence on behalf of the respondents to disprove the same, the Tribunal ought to have fixed a sum of Rs.10,000/- as the monthly income and granted 100% future enhancement since the deceased was a skilled labour. The Tribunal while calculating the future prospects inadvertently added a sum of Rs.800/-, instead of Rs.1,800/-. The interest of 7.5% granted by the Tribunal ought to have been raised to 12%. The amounts awarded under various heads as compensation are very meagre and prayed for enhancement of the same.

6.Per contra, the learned counsel appearing for the 3rd respondent-Insurance Company contended that the appellants have failed to prove the age, avocation and income of the deceased. In the absence of any material, the Tribunal has rightly fixed a sum of Rs.6,000/- as the monthly income of the deceased, which is not meagre. The appellants have not made any case for enhancement of the compensation. In any event, the amounts awarded by the Tribunal is not meagre and prayed for dismissal of the appeal.

7.Heard the learned counsel appearing for the appellants as well as the 3rd respondent and perused the materials available on record.

8.It is the contention of the appellants that the deceased was doing machine printing works and was earning a sum of Rs.300/- per day. The Tribunal fixed a sum of Rs.6,000/- per

month as the notional income of the deceased. The same is meagre. The accident is of the year 2011. Hence, the monthly income of the deceased is fixed at Rs.8,000/- and the appellants are entitled to 40% enhancement towards future prospects. The compensation granted towards loss of dependency is modified to Rs.16,12,800/- {Rs.8,000/- + Rs.3,200/-(40% of Rs.8,000/-)} x 12 x 16 x $\frac{3}{4}$. The Tribunal has not awarded any amount towards loss of estate. Hence, a sum of Rs.15,000/- is granted towards the said head. The amount granted by the Tribunal under other heads are just and reasonable and hence, they 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 dependency	10,17,600/-	16,12,800/-	enhanced
2.	Loss of consortium	40,000/-	40,000/-	confirmed
3.	Loss of love and affection	1,00,000/-	1,00,000/-	confirmed
4.	Funeral expenses	15,000/-	15,000/-	confirmed
5.	Loss of estate	-	15,000/-	granted
	Total	11,72,600/-	17,82,800/-	Enhanced by Rs.6,10,200/-

9. In the result, the appeal is allowed and award granted by the Tribunal at Rs.11,72,600/- is enhanced to Rs.17,82,800/- along with interest and costs. The 3rd respondent-Insurance Company is directed to deposit the enhanced award amount along with interest and costs, 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.215 of 2012 at the first instance and recover the same from the 2nd respondent. On such deposit, the appellants 1 and 4/claimants 1 and 4 are permitted to withdraw their shares of the enhanced award amount along with interest and costs, as per the ratio of apportionment fixed by the Tribunal, less the amount already withdrawn if any, by filing necessary application before the Tribunal. The shares of the minor appellants 2 and 3 are directed to be deposited in any of the Nationalized Bank, till the minors attain majority. The 1st appellant/mother of the minor appellants 2 and 3 is permitted to withdraw the accrued interest, once in three months for the welfare of the minor

appellants 2 and 3. The appellants/claimants are directed to pay the necessary Court fee, if any, for the enhanced amount now determined by this Court, within a period of two weeks from the date of receipt of a copy of this judgment. No costs.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

gsa

To

The Principal Subordinate Judge,
(Motor Accident Claims Tribunal),
Tiruppur.

Copy To :

The Section Officer,
V.R. Section,
High Court, Madras.

+1cc to Mr.K.Sudhakar, Advocate SR.No.24521

+1cc to Ms.C.Bhuvanasundari, Advocate SR.No.24498

C.M.A.No.2268 of 2018

CMR(CO)
GMY(06/08/2019)

सत्यमेव जयते

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