

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3071 of 2018

1.Nagammal

2.Revathi

3.Ramesh

... Appellants/Petitioners

Vs.

1.M.Aravindan

2.M/s.Reliance General Insurance Co. Ltd.,
Sri Lakshmi Complex, 1st Floor,
Omalur Main Road, Swornapuri,
Salem-4.

... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 01.07.2017 made in M.C.O.P.No.1848 of 2015 on the file of the Motor Accidents Claims Tribunal, 1st Additional District Court, Salem.

For Appellants : Mr.K.Varadha Kamaraj
For R2 : Mr.R.Sunil Kumar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed seeking enhancement of compensation granted by the Tribunal in the award dated 01.07.2017 made in M.C.O.P.No.1848 of 2015 on the file of the Motor Accidents Claims Tribunal, 1st Additional District Court, Salem.

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 claimants in M.C.O.P.No.1848 of 2015 on the file of the Motor Accidents Claims Tribunal, 1st Additional District Court, Salem. They filed the above claim petition claiming a sum of Rs.25,00,000/- as compensation for the death of one Kuppusamy, who died in the accident that took place on 26.06.2015.

4.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the rider of the motorcycle belonging to the first respondent and directed the second respondent being insurer of the said motorcycle to pay a sum of Rs.12,22,642/- as compensation to the appellants/claimants.

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

6.The learned counsel appearing for the appellants contended that the deceased was working as agriculturist and dyer in dyeing factory. The Tribunal has erred in fixing a sum of Rs.9,000/- per month as notional income of the deceased instead of Rs.15,000/-. The appellants have let in oral and documentary evidence to prove their contention that the appellant was earning a sum of Rs.15,000/- per month as dyer in Renuka dying company and marked Exs.P7 and P10. The Tribunal has failed to grant any enhancement for future prospects. 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 appellants have failed to prove the avocation and income of the deceased. In the absence of such proof, the Tribunal has fixed Rs.9,000/- per month as notional income of the deceased, which is excessive and hence, the appellants are not entitled for any enhancement towards future prospects. The amounts awarded by the Tribunal under different heads are also not meagre and prayed for dismissal of the appeal.

8.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the second respondent and perused the materials available on record.

9.From the materials available on record, it is seen that the appellants have claimed that the deceased was working as a dyer in Renuka dyeing company and was earning a sum of Rs.15,000/-per month and by doing agricultural work, he was earning a sum of Rs.5,000/- per month. The appellants have not examined any body from the company, in which the deceased alleged to have worked and no proof for getting income from the

agricultural work, except marking Exs.P7 and P10, which do not disclose the agricultural income of the deceased. The Tribunal has considered all the materials available on record in this regard and fixed the notional income of the deceased at Rs.9,000/- per month, which is proper. The deceased was aged 50 years at the time of accident. The Tribunal has not awarded any amount towards future prospects. The appellants are entitled to 25% enhancement towards future prospects. The amount granted by the Tribunal towards loss of income is modified as follows:

$$\text{Rs.9,000/-} + 2250 (9000 \times 25\%) \times 12 \times 13 \times \frac{2}{3} = \text{Rs.11,70,000/-}$$

The amount awarded by the Tribunal under the head of medical expenses is hereby confirmed. The amount of Rs.20,000/- awarded by the Tribunal towards loss of love and affection is hereby set aside. A sum of Rs.20,000/- awarded by the Tribunal towards loss of consortium is hereby enhanced to Rs.40,000/-. A sum of Rs.20,000/- awarded by the Tribunal towards funeral expenses is hereby reduced to Rs.15,000/-. The Tribunal has not awarded any amount towards loss of estate and hence, this Court awards a sum of Rs.15,000/- under this head. 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	9,36,000	11,70,000	Enhanced
2.	Loss of love and affection	20,000	-	Set aside
3.	Medical Expenses	2,26,642	2,26,642	Confirmed
4.	Funeral expenses	20,000	15,000	Reduced
5.	Loss of consortium	20,000	40,000	Enhanced
6.	Loss of estate	-	15,000	Granted
	Total	12,22,642	14,66,642	Enhanced by Rs.2,44,000 /-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.12,22,642/- is hereby enhanced to Rs.14,66,642/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The appellants shall pay the

necessary Court fee if any, on the enhanced compensation. The first appellant being the wife of the deceased is entitled to Rs.11,40,000/-, second appellant being the daughter of the deceased is entitled to Rs.1,00,000/- and the third appellant being the son of the deceased is entitled to Rs.2,26,642/-. 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. On such deposit, the appellants/claimants are permitted to withdraw their respective shares from the enhanced award amount along with proportionate interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accidents Claims Tribunal
1st Additional District Judge, Salem.

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

+lcc to Mr.R.Thirunavukkarasu, Advocate sr.543

C.M.A.No.3071 of 2018

nr 10/10/2019

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