

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.1591 OF 2004

1.M.Natarajan
2.K.Senthil Mathi
3.N.Prathish Kumar

.. Appellants/Claimants

Vs.

1.R.Veerasingam

2.M/s.Sri Balaji Transport,
35, Kannagi Street,
Erode Taluk & District.

3.The United India Insurance Co. Ltd.,
Dharapuram,
Erode District.

.. Respondents/Respondents

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 04.01.2002, made in M.C.O.P. No.313 of 2001, on the file of the II Additional District Court, (Motor Accident Claims Tribunal), Erode.

For Appellants : Mr.D.Selvaraju

For Respondents: Ms.I.Malar (For R3)

R1 & R2 Now as per Order
dated 19.07.2019

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J U D G M E N T

The matter is heard through "Video Conferencing".

This appeal has been filed for enhancement of compensation granted by the award dated 04.01.2002, made in M.C.O.P. No.313 of 2001, on the file of the II Additional District Court, (Motor Accident Claims Tribunal), Erode.

2.The appellants-claimants filed M.C.O.P. No.313 of 2001, on the file of the II Additional District Court, (Motor Accident Claims Tribunal), Erode, claiming a sum of Rs.12,00,000/- as compensation for the death of one Kannammal, who died in the accident that took place on 11.09.2000.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by 1st respondent/driver of the Bus belonging to the 2nd respondent and directed the respondents to pay a sum of Rs.4,41,000/- as compensation to the appellants.

4.Not being satisfied with the amounts awarded by the Tribunal to the appellants by the award dated 04.01.2002, made in M.C.O.P. No.313 of 2001, the appellants have come out with the present appeal.

5.The learned counsel appearing for the appellants contended that at the time of accident, the deceased was an agriculturist-cum-milk vendor and was earning a sum of Rs.6,000/- to Rs.7,000/- per month. On 11.09.2000, due to negligence of the 1st respondent, the accident occurred and due to the injuries sustained in the accident, she died in the Hospital, inspite of treatment. The Tribunal without considering the evidence let in by the appellants, erroneously fixed a sum of Rs.1,125/- per month as notional income of the deceased. The Hon'ble Apex Court has held that minimum income of a person can be arrived at Rs.3,000/- per month. The appellants have filed Exs.A12 and A13, being the medical bills. The deceased was admitted in KG Hospital, Coimbatore, on 20.09.2000. She has taken treatment as in-patient for a period of 13 days in two different hospitals. Her leg was amputated during treatment. Inspite of treatment, she died on 04.10.2000. The respondents have not let in any evidence to disprove the evidence of the appellants with regard to avocation, income and medical expenses for treatment of the deceased. The Tribunal erroneously fixed meagre amounts and without giving any reason, reduced the medical bills claimed by the appellant and prayed for enhancement of the compensation.

6.Per contra, Mrs. I. Malar, learned counsel appearing for the 3rd respondent-Insurance Company contended that the appellants failed to prove the avocation and income of the deceased. The Tribunal, in the absence of any material evidence with regard to avocation and income, fixed the notional income of the deceased at Rs.1,125/- per month. The accident is of the year 2000. The notional income fixed by the Tribunal is not meagre. The Tribunal considering Exs.A12 and A13, medical bills, rejected some of the bills and granted Rs.2,40,000/-, which is correct. The appellants are not entitled for any enhancement and

prayed for dismissal of the appeal.

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

8. From the materials on record, it is seen that the appellants have contended that the deceased was doing Agriculture cattle farm and milk vending business and was earning a sum of Rs.6,000/- per month. The appellant failed to substantiate the avocation and income of the deceased by letting in any acceptable evidence. In the absence of any evidence with regard to avocation and income, the Tribunal fixed the notional income of the deceased at Rs.45/- per day and deducted 1/3rd towards personal expenses. The accident is of the year 2000. The notional income fixed by the Tribunal is meagre. Considering the materials on record in its entirety, a sum of Rs.2,500/- is fixed as notional income of the deceased. The deceased was 42 years as per the Post Mortem Certificate marked as Ex.A5. The Tribunal having rightly applied multiplier '14', but has not granted any enhancement towards future prospects. The appellants are entitled to 25% enhancement towards future prospects of the deceased. Hence, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.3,50,000/- $\{ [Rs.2,500/- + Rs.625/- (25\% \text{ of } Rs.2,500/-)] \times 12 \times 14 \times 2/3 \}$. The amounts granted by the Tribunal towards loss of consortium, loss of love and affection and funeral expenses are meagre. Hence, the same are enhanced to Rs.40,000/- towards loss of consortium to the 1st appellant, Rs.25,000/- towards loss of love and affection to the appellants 2 and 3 and Rs.15,000/- towards funeral expenses. The appellants produced Exs.A12 and A13 - medical bills for Rs.2,90,081.50/- and Rs.1,25,924.80/- respectively for the expenses incurred for the treatment from the date of accident till her death. The Tribunal rejected some of the bills claimed by the appellants as per Exs.A12 and A13. Exs.A12 and A13 were marked without any objection. The reason given by the Tribunal for rejecting some of the bills and reducing the amounts is not correct when the respondents have not disputed the genuineness of the said bills. Hence, the appellants are entitled to Rs.2,90,081.50/- as per Ex.A12 and Rs.1,25,924.80/- as per Ex.A13. Therefore, the total compensation awarded by the Tribunal towards medical expenses is enhanced to Rs.4,16,006.30 $[Rs.2,90,081.50/- + Rs.1,25,924.80/-]$, which is rounded off to Rs.4,16,000/-. The appellants are not entitled to any amount towards pain and suffering and hospital expenses and hence, the amounts awarded by the Tribunal towards pain and suffering and hospital expenses are set aside. The Tribunal has not awarded any amount towards loss of estate. Hence, a sum of Rs.15,000/- is awarded towards

loss of estate. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are hereby confirmed.

9.It is well settled that the Tribunal and the Courts have to award just compensation. Though the claimants have claimed lesser compensation, the Courts have power to grant just compensation more than the amount claimed by the claimants. 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	1,26,000/-	5,25,000/-	Enhanced
2.	Loss of consortium to 1 st appellant	15,000/-	40,000/-	Enhanced
3.	Loss of love and affection to the appellants 2 and 3	10,000/-	25,000/-	Enhanced
4.	Funeral expenses	5,000/-	15,000/-	Enhanced
5.	Pain and suffering	10,000/-	-	Set aside
6.	Medical expenses	2,50,000/-	4,16,000/-	Enhanced
7.	Hospital expenses	25,000/-	-	Set aside
8.	Loss of estate	-	15,000/-	Granted
	Total	4,41,000/-	10,36,000/-	Enhanced by Rs.5,95,000/-

10.In the result, the appeal is allowed and the amount awarded by the Tribunal at Rs.4,41,000/- is enhanced to Rs.10,36,000/-. The appellants are entitled to 9% interest per annum from the date of petition till the date of deposit for the sum of Rs.4,41,000/-, as per award and 7.5% interest per annum for the enhanced award amount of Rs.5,95,000/-. The respondents

are directed to deposit the enhanced award amount, now determined by this Court, along with interest and costs, less the amount already deposited, within a period of eight weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.313 of 2001. On such deposit, the appellants are permitted to withdraw the enhanced award amount, now determined by this Court, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The appellants are directed to pay the necessary court fee on the enhanced award amount. No costs.

Sd/-

Assistant Registrar(CS IX)

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Sub Assistant Registrar

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To

1. The II Additional District Judge,
(Motor Accident Claims Tribunal),
Erode.
2. The Section Officer,
V.R Section,
High Court, Madras.

C.M.A.No.1591 of 2004

LN(CO)
CS/17/03/2021

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