IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.56 of 2020

1.Tamilarasi

2.Tamilnidhi

3.Indirani ... Appellants /petitioners

Vs.

1.A.P.Jawaharnath (Set Exparte before the Tribunal)

2.ICICI Lombard General Insurance Company Limited,
No.140, Chottabhai Centre, Nungambakkam High Road,
Nungambakkam, Chennai - 600 032.
... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 09.09.2019 made in M.C.O.P.No.321 of 2015 on the file of the Motor Accident Claims Tribunal, V Small Causes Court, Chennai.

For Appellants : Mr.K.Varadhakamaraj

For R2 : Mr.K.Poomalai

J U D G M E N T

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 09.09.2019 made in M.C.O.P.No.321 of 2015 on the file of the Motor Accident Claims Tribunal, V Small Causes Court, Chennai.

2.The appellants are claimants in M.C.O.P.No.321 of 2015 on the file of the Motor Accident Claims Tribunal, V Small Causes Court, Chennai. The appellants filed the said claim petition claiming a sum of Rs.15,00,000/- as compensation for the death of one Natarajan, who died in the accident that took place on 09.09.2014.

3.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the rider of the motorcycle belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being the insurer of the said motorcycle to pay a sum of Rs.1,60,000/- as compensation to the appellants.

4.Not being satisfied with the quantum of compensation awarded by the Tribunal, the appellants have come out with the present appeal seeking enhancement of compensation.

5.The learned counsel appearing for the appellants contended that the Tribunal erred in not fixing notional income of the deceased. The Tribunal erroneously not awarded any compensation amount towards loss of dependency on the ground that the 1st respondent is receiving family pension. Though the appellants have marked Ex.P8/medical bills towards medical expenses for a sum of Rs.45,000/-, the Tribunal has not granted any amount towards medical expenses and prayed for enhancement of compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that after the death of the deceased, the 1st appellant is getting family pension and therefore there is no loss of dependency. The appellants 2 & 3 are married son and daughter of the deceased and they are not dependants of the deceased. The Tribunal after considering all the materials available on record in proper perspective, has awarded just compensation. 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 learned counsel appearing for the 2nd respondent/Insurance Company and perused all the materials available on record.

8.It is the contention of the appellants that the deceased was a retired BDO and was getting pension amount of Rs.14,976/- and also earning a sum of Rs.50,000/- per month by doing real estate business. The appellants have failed to substantiate that the deceased was getting Rs.50,000/- per month by doing real estate business. The appellants have filed Ex.P5/pension particulars of the deceased. The Tribunal rejected the claim of the appellants for compensation towards loss of dependency on the ground that the 1st appellant is getting family pension, there is no loss of dependency and loss of estate. The same is erroneous. The appellants are entitled to compensation towards loss of dependency as the entire pension received by the deceased was stopped after the death of the deceased. The 1st appellant will not get entire pension amount which was received by the deceased and she will get only half of the amount. Further, the family pension cannot be treated as income for a widow. Therefore, a sum of Rs.15,000/- is fixed as monthly income of the deceased. As per Ex.P6/bank pass book, the age of the deceased was 70 years at the time of accident. The multiplier applicable is '5'. After deducting 1/3rd towards personal expenses, the appellants are entitled to a sum of Rs.6,00,000/- (Rs.15,000/- x 12 x 5 x 2/3) towards loss of dependency.

9.From the award of the Tribunal, it is seen that the appellants have spent Rs.45,000/- towards medical expenses and produced Ex.P8/medical bills to substantiate the same. The 2nd respondent did not object the same. The Tribunal is inclined to award a sum of Rs.45,000/- towards medical expenses. But unfortunately, the said amount was not calculated in the award. Therefore, the appellants are entitled to a sum of Rs.45,000/- towards medical expenses. The amounts awarded by the Tribunal under all the other heads are just and reasonable and hence the same are hereby 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	-	6,00,000	Granted
2.	Loss of consortium	40,000	40,000	Confirmed
3.	Loss of love and affection	80,000	80,000	Confirmed
4.	Loss of estate	15,000	15,000	Confirmed
5.	Transport expenditure	10,000	10,000	Confirmed
6.	Funeral expenses	15,000	15,000	Confirmed
7.	Medical expenses	-	45,000	Granted
	Total	Rs.1,60,000/-	Rs.8,05,000/-	Enhanced by Rs.6,45,000/-

10.In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.1,60,000/- is hereby enhanced to Rs.8,05,000/- 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 necessary Court fee, if any, on the enhanced compensation. The 2nd 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 are permitted to withdraw their respective share of the enhanced award amount on the basis of apportionment fixed by the Tribunal along with proportionate interest and costs, less the amount if any, already withdrawn by filing necessary applications before the Tribunal. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1.The V Judge,
Motor Accidents Claims Tribunal,
Small Causes Court, Chennai.

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

+1cc to Mr.K.Varadhakamaraj, Advocate Sr.14031
+1cc to Mr.K.Poomalai, Advocate SR.14066

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