IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1261 of 2009

1.Nainamal Seshmalji
2.Aruna Arvind
3.Kamlesh Kumar Nainmal
4.Rakesh Kumar Nainmal
5.Pinky Akash ... Appellants /Petitioners

Vs.

1.M.Venkatesan
2.The Oriental Insurance Company Limited,
No.8, Esplanade Road,
Chennai - 108. ... Respondents /Respondents
(R1 remained exparte before the Tribunal)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 21.04.2008 in M.C.O.P.No.3523 of 2006 on the file of the Motor Accident Claims Tribunal, Chief Small Causes Court, Chennai.

For Appellants : Mr.S.Gangaram Prasad

For R2 : Mr.K.Vinod
for Mr.Elveera Ravindran

J U D G M E N T

The Civil Miscellaneous Appeal has been filed by the appellants seeking enhancement of compensation granted by the Tribunal in the award dated 21.04.2008 made in M.C.O.P.No.3523 of 2006 on the file of the Motor Accident Claims Tribunal, Chief Small Causes Court, Chennai.

2.The appellants are the claimants in M.C.O.P.No.3523 of 2006 on the file of the Motor Accident Claims Tribunal, Chief Small Causes Court, Chennai. They filed the said claim petition claiming a sum of Rs.10,00,000/- as compensation for the death of one Vasanthi bai, who died in the accident that took place on 20.06.2006.

3.The Tribunal, after considering the pleadings, oral and documentary evidence, held that the accident occurred only due to the rash and negligent driving by the driver of the Eicher van, belonging to the 1st respondent and directed the 2nd respondent/Insurance Company, being the insurer of the vehicle to pay a sum of Rs.3,65,000/- as compensation to the appellants.

4.Not being satisfied with the amounts 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 deceased was doing Finance Business and was earning a sum of Rs.9,000/- per month. The appellants filed Ex.P8 series/income returns of the deceased for four assessment years i.e. from 2004-2005 to 2007-2008 and proved the income. However, without considering the same, the Tribunal erroneously fixed the notional income of the deceased at Rs.3,000/- per month. The learned counsel would also contend that the view of the Tribunal that there was no loss in business due to sudden demise of the deceased and the claimants has not sustained any monetary loss in the business, is erroneous and cannot be sustained. The Tribunal erred in fixing lessor multiplier '9' without assigning any reason instead of multiplier '11' as per Second Schedule of Motor Vehicles Act. The Tribunal has not awarded any amounts towards loss of estate and loss of expectation of life. The compensation awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6.Per contra, learned counsel appearing for the second respondent contended that the Income Tax returns is not the only basis to fix the monthly income of the deceased. In such circumstances, a sum of Rs.3,000/- per month fixed by the Tribunal as notional income of the deceased is not meagre. The appellants have not proved that due to the demise of the deceased, the appellants have suffered any pecuniary loss from the business and they have not mentioned the same in the statements of accounts filed along with income tax returns and therefore, the monthly income fixed by the Tribunal is not meagre. The Tribunal has rightly adopted the multiplier '9' and awarded compensation under different heads which are not meagre. The appellants are not entitled to any amounts towards loss of estate and loss of expectation of life 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 second respondent and perused the entire materials available on record.

8.It is the contention of the appellants that the deceased was aged 54 years at the time of accident and was doing Finance Business and was earning a sum of Rs.9,000/- per month. To prove the same the claimants filed Ex.P8 series/income returns for four assessment years i.e. 2004-2005 to 2007-2008. The Tribunal fixed the notional income of the deceased at Rs.3,000/- per month. The Tribunal held that the appellants had not sustained any loss in the business due to the sudden demise of the deceased and the earning of the deceased was not mentioned in the statements of accounts filed along with the income tax returns. But the appellants have filed income tax returns of the deceased for four assessment years which were marked as Ex.P8 series. On perusal of Ex.P8 series, it reveals that the total income of the deceased for the years 2004-05 is Rs.90,000/-, for 2005-06 is Rs.75,000/- and for 2006-07 is Rs.81,000/-. The deceased died in the year 2006 and hence, the total income comes to Rs.2,46,000/- for three years and when it was divided by 36 months, it comes to Rs.6,833/- per month. However, this Court rounds it off to Rs.6,850/- and fixed Rs.6,850/- as monthly income of the deceased. There are five dependents of the deceased and hence 3/4th has to be deducted towards personal expenses of the deceased. The deceased was aged 54 years at the time of accident and the Tribunal has not granted any enhancement towards future prospects of the deceased. The appellants are entitled to 10% enhancement towards 'future prospects'. The correct multiplier applicable is '11' as per Second Schedule of Motor Vehicles Act and the Tribunal erroneously adopted multiplier '9'. Thus, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.7,45,965/- {Rs.7,535/- [Rs.6,850/- + Rs.685/- (10% of Rs.6,850/-] X 12 X 11 X 3/4}. The Tribunal has awarded a meagre sum of Rs.15,000/- towards loss of consortium to the 1st appellant and Rs.5,000/- each to appellants 2 to 5 towards love and affection and the same are enhanced to Rs.40,000/- to the 1st appellant towards loss of consortium and Rs.15,000/- each to appellants 2 to 5 towards loss of love and affection. The Tribunal has awarded a sum of Rs.6,000/- together towards funeral expenses and transportation, which is not correct and the same is set aside. The appellants are entitled to a sum of

Rs.15,000/- towards funeral expenses and Rs.6,000/- towards transportation. The Tribunal has not awarded any amount towards loss of estate. Therefore, a sum of Rs.15,000/- is awarded towards loss of estate.

9.It is well settled that the Tribunal and the Courts have to award just compensation. Though the claimant has 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	3,24,000/-	7,45,965/-	enhanced
2.	Loss of consortium to the 1st appellant	15,000/-	40,000/-	enhanced
3.	Loss of love and affection to the appellants 2 to 5	20,000/-	60,000/-	enhanced
4.	Funeral expenses and Transportation	6,000/-	-	Set aside
5	Funeral expenses	-	15,000/-	granted
6	Transportation	-	6,000/-	granted
7	Loss of estate	-	15,000/-	granted
	Total	Rs.3,65,000/-	Rs.8,81,965/-	Enhanced by Rs.5,16,965/-

10.In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.3,65,000/- is hereby enhanced to Rs.8,81,695/- 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 necessary Court fee on the enhanced amount of 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 to the credit of M.C.O.P.No.3523 of 2006 on the file of the Motor Accident Claims Tribunal, Chief Small Causes Court, Chennai. 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(CS VI)

//True Copy//

Sub Assistant Registrar

gbi

To

1.The Chief Judge,
Motor Accident Claims Tribunal,
Small Causes Court, Chennai.

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

+1cc to Mr.E.L.Veera Ravindran, Advocate Sr.22095

+1cc to Mr.G.Balaji Prasad, Advocate Sr.22352

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srg 22/01/2021