

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.1696 OF 2010

1.Vijaya
2.Shanthi
3.Murugan

.. Appellants/Claimants

Vs.

1.R.Sambath

2.The Divisional Manager,
United India Insurance Co. Ltd.,
No.113-A, Nethaji Road, I Floor,
Cuddalore. ... Respondents/Respondents

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 12.02.2010 made in M.C.O.P.No.160 of 2009 on the file of the Principal Sub-Judge, Motor Accident Claims Tribunal, Tindivanam.

For Appellants : Mr.R.Selvakumar

For R2 : Mr.J.Chandran

J U D G M E N T

The Civil Miscellaneous Appeal is filed by the appellants/claimants seeking enhancement of compensation granted by the Tribunal in the award dated 12.02.2010 made in M.C.O.P.No.160 of 2009 on the file of the Motor Accident Claims Tribunal, Tindivanam.

2.The appellants are claimants in M.C.O.P.No.160 of 2009 on the file of the Motor Accident Claims Tribunal, Tindivanam. The appellants filed the said claim petition claiming a sum of Rs.9,00,000/- as compensation for the death of one Balan, who died in the accident that took place on 04.02.2009.

3.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the lorry belonging to the 1st respondent and directed the respondents to pay a sum of Rs.3,29,000/- 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 deceased was aged 49 years at the time of accident and was earning a sum of Rs.9,500/- per month by working as a driver. The Tribunal fixed a meagre sum of Rs.3,000/- per month as notional income of the deceased. The Tribunal has not awarded any enhancement towards future prospects. The Tribunal has not awarded amount separately to the 1st appellant towards loss of consortium. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the appellants have not filed any documents to prove the avocation and income of the deceased. In the absence of any material evidence, the Tribunal has fixed Rs.3,000/- per month as notional income of the deceased which is not meagre. 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 working as a driver and was earning a sum of Rs.10,000/- per month at the time of the accident. PW2 / owner of the vehicle was examined who has deposed that the income of the deceased was Rs.3,000/- for every 10 days and it would be Rs.9,000/- per month, apart from the daily batta. Except oral evidence, the appellants have failed to produce any document to prove the income of the deceased. In the absence of any material evidence, the Tribunal fixed notional income of the deceased at Rs.3,000/- per month and the same is meagre. The accident is of the year 2009. A sum of Rs.6,000/- is fixed as monthly income of the deceased. Considering Ex.P4 / postmortem certificate, the Tribunal fixed the age of the deceased as 50 years at the time of accident. The Tribunal has not awarded any enhancement towards future prospects. The appellants are entitled to 25% enhancement towards future prospects. Since there are three

dependents depending on the deceased, the Tribunal deducted 1/3rd towards the personal expenses of the deceased and applied multiplier '13' which is proper. Thus, the amount granted by the Tribunal towards loss of dependency is modified to Rs.7,80,000/- (Rs.6,000/- + 1,500 (Rs.6,000/- x 25%) 12 x 13 x 2/3). The Tribunal has awarded only a sum of Rs.10,000/- altogether towards loss of consortium and loss of love & affection which is meagre. The 1st appellant is entitled to a sum of Rs.40,000/- towards loss of consortium and the appellants 2 & 3 are entitled to a sum of Rs.10,000/- each towards loss of love & affection. The Tribunal awarded a sum of Rs.2,000/- towards transportation charges, which is meagre and hence the same is hereby enhanced to Rs.5,000/-. The Tribunal has not granted any amount towards loss of estate. Hence, a sum of Rs.15,000/- is granted towards loss of estate. The amount awarded by the Tribunal towards funeral expenses is just and reasonable and hence the same is 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	3,12,000	7,80,000	Enhanced
2.	Loss of consortium	10,000	40,000	Enhanced
	Loss of love & affection to appellants 2 & 3	-	20,000	Enhanced
3.	Funeral expenses	5,000	5,000	Confirmed
4.	Transportation charges	2,000	5,000	Enhanced
5.	Loss of estate	-	15,000	Granted
	Total	Rs.3,29,000/-	Rs.8,65,000/-	Enhanced by Rs.5,36,000/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.3,29,000/- is hereby enhanced to Rs.8,65,000/- 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 respondents are 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(CCC)

//True Copy//

Sub Assistant Registrar

mtl

To

1. The Principal Sub-Judge,
The Motor Accidents Claims Tribunal,
Tindivanam.

Copy To

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

+lcc to Mr.R.Selvakumar, Advocate, S.R.No.20987

+lcc to Mr.J.Chandran, Advocate, S.R.No.21083

C.M.A.No.1696 of 2010

VGI (CO)

CS/06/01/2021

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