

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.550 of 2020

Rajambal (died)
1.P.Sekar
2.P.Raja
3.P.Elumalai
Selvi (died)
4.Senpagavalli Appellants/Petitioner

Vs.

1.N.Saritha
2.The Divisional Manager,
National Insurance Company Limited,
Opposite to Indian coffee, Nehru Street,
Pondicherry. ... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 13.10.2017 made in M.C.O.P.No.163 of 2006 on the file of the Motor Accident Claims Tribunal, Sub Court, Gingee.

For Appellants : Mr.A.Sathishkumar

For R2 : Ms.N.B.Surekha

J U D G M E N T
सत्यमेव जयते

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 13.10.2017 made in M.C.O.P.No.163 of 2006 on the file of the Motor Accident Claims Tribunal, Sub Court, Gingee.

2.The appellants are the claimants in M.C.O.P.No.163 of 2006 on the file of the Motor Accident Claims Tribunal, Sub Court, Gingee. They filed the above said claim petition, claiming a sum of Rs.15,00,000/- as compensation for the death of one Pandurangan, who died in the accident that took place on 03.04.2006.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent riding by the rider of the motorcycle belonging to the 1st respondent and directed the respondents 1 and 2, being the owner and insurer of the motorcycle jointly and severally to pay a sum of Rs.4,60,000/- 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 Rice and Paddy Business and was earning a sum of Rs.9,000/- per month. But, the Tribunal fixed a meagre sum of Rs.4,600/- per month as notional income of the deceased. The Tribunal ought to have fixed a sum of Rs.9,000/- per month as notional income 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 Tribunal ought to have granted 10% enhancement towards future prospects of the deceased. The dependants are 6 in number and the Tribunal ought to have deducted 1/4th towards personal expenses instead of deducting 1/3rd. The Tribunal has not awarded any amount towards loss of estate. The amounts awarded by the Tribunal towards funeral expenses and loss of love and affection are meagre and prayed for enhancement of compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that in the absence of any material evidence with regard to avocation and income, a sum of Rs.4,600/- per month fixed by the Tribunal as notional income of the deceased is not meagre. The appellants are not entitled to any enhancement towards future prospects and the Tribunal has rightly deducted 1/3rd towards personal expenses of the deceased. The amounts awarded by the Tribunal under different heads are 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 entire materials on record.

8.It is the contention of the appellants that the deceased was doing Rice and Paddy Business and was earning a sum of Rs.9,000/- per month at the time of accident. They failed to substantiate the said contention. In the absence of any material

evidence with regard to avocation and income of the deceased, the Tribunal fixed a sum of Rs.4,600/- per month as notional income of the deceased. The accident occurred in the year 2006 and the monthly income fixed by the Tribunal is meagre. Therefore, a sum of Rs.6,000/- per month is fixed as notional income 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 of the deceased. The dependants are 6 in number and the Tribunal ought to have deducted 1/4th towards personal expenses of the deceased instead of deducting 1/3rd. In view of the above, compensation awarded by the Tribunal towards loss of dependency is modified to Rs.6,53,400/- {Rs.6,600/- [Rs.6,000/- + Rs.600/- (10% of Rs.6,000/-)] X 12 X 11 X ¾}. The amount awarded by the Tribunal towards funeral expenses is meagre and the same is enhanced to Rs.15,000/-. The Tribunal has not awarded any amount towards loss of estate. Therefore, a sum of Rs.15,000/- is awarded towards loss of estate. The amount awarded by the Tribunal towards loss of love and affection is just and reasonable and hence, the same is confirmed. The appellants are not entitled to any amount towards loss of consortium, as the wife of the deceased also died. 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	4,04,800/-	6,53,400/-	Enhanced
2.	Loss of love and affection	50,000/-	50,000/-	Confirmed
3.	Funeral expenses	5,200/-	15,000/-	Enhanced
4.	Loss of estate	-	15,000/-	Granted
	Total	Rs.4,60,000/-	Rs.7,33,400/-	enhanced by Rs.2,73,400/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.4,60,000/- is hereby enhanced to Rs.7,33,400/- together with interest at the rate of 6% per annum from the date of petition till the date of deposit. The respondents are jointly and severally 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.163 of 2006 on the file of the Motor Accident Claims Tribunal, Sub Court, Gingee. 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 interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. It is made clear that the appellants are not entitled to any interest for Rs.2,73,400/- the amount now enhanced by this Court, as per the order of this Court dated 05.02.2020 made in C.M.P.No.2103 of 2020 in C.M.A.No.SR.2746 of 2020. The appellants are directed to pay the necessary Court fee on the enhanced amount of compensation now determined by this Court as per the order of this Court dated 27.01.2020 made in C.M.P.No.460 of 2020 in C.M.A.No.SR.2746 of 2020. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

krk
To

The Motor Accident Claims Tribunal,
Subordinate Judge,
Gingee.

Copy to

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

+1cc to Mr.N.B.Surekha, Advocate Sr.14050
+2cc to Mr.C.Thangaraju, Advocate Sr.14326

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