IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1272 of 2013

1.Murugavalli

2.Minor. Amsaveni
(Minor 2nd appellant represented by her next friend, mother Murugavalli, 1st appellant herein)

3.Muniappan

4.Ellamma

5.Minor. Kasi ..Appellants/Petitioners
(Minor 5th appellant represented by his next friend, father Muniappan 3rd appellant herein)

Vs.

1.Rathnamma

2.The Divisional Manager,
United India Insurance Company Limited,
Divisional Office, M.M.Reddy Complex,
Old Bangalore Road, Hosur - 635 109. ..Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 29.09.2010 made in M.C.O.P.No.636 of 2009 on the file of the Motor Accidents Claims Tribunal, Additional District Court, Krishnagiri.

For Appellants	:	Mr.K.Prasanna for Mr.M.Sriram
For R2	:	Mr.J.Chandran

J U D G M E N T

The matter is heard through "Video Conferencing".

2.This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 29.09.2010 made in M.C.O.P.No.636 of 2009 on the file of the Motor Accidents Claims Tribunal, Additional District Court, Krishnagiri.

3.The appellants are the claimants in M.C.O.P.No.636 of 2009 on the file of the Motor Accidents Claims Tribunal, Additional District Court, Krishnagiri. They filed the above said claim petition claiming a sum of Rs.10,00,000/- as compensation for the death of one Venkatraman, who died in the accident that took place on 10.07.2008.

4.The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred only due to rash and negligent driving by the driver of the tempo van belonging to the 1st respondent and directed the respondents to jointly and severally to pay a sum of Rs.4,57,000/- as compensation to the appellants.

5.Not being satisfied with the amounts awarded by the Tribunal, the appellants have come out with the present appeal.

6.The learned counsel appearing for the appellants contended that the deceased was working as Mason and was earning a sum of Rs.7,500/- per month. The Tribunal fixed a meagre sum of Rs.3,000/- per month as notional income of the deceased. The Tribunal ought to have fixed a sum of Rs.7,500/- per month as notional income of the deceased. The deceased was aged 26 years at the time of accident. The Tribunal has not granted any enhancement towards future prospects. There are five dependants of the deceased and the Tribunal ought to have deducted 1/3rd towards personal expenses of the deceaesed instead of deducting 1/4th. The amounts awarded by the Tribunal towards loss of consortium to the 1st appellant, loss of love and affection, funeral expenses and transportation are meagre and prayed for enhancement of compensation.

7.Per contra, Mr.J.Chandran, learned counsel appearing for the 2nd respondent-Insurance Company contended that the appellants failed to prove the avocation and income of the deceased. In the absence of any material evidence with regard to avocation and income of the deceased, a sum of Rs.3,000/- per month fixed by the Tribunal as notional income of the deceased is not meagre. The appellants 1 and 2, who are the wife and minor child of the deceased are the only dependants of the deceased. The appellants 3 to 5 are not the dependants of the deceased. Hence, 1/3rd deduction made by the Tribunal is proper. The appellants in the claim petition have claimed that the deceased was aged 26 years at the time of accident and hence, multiplier '18' adopted by the Tribunal is not correct. In the absence of any materials with regard to avocation and income, a sum of Rs.4,32,000/- awarded by the Tribunal towards loss of dependency is excessive and hence, the appellants are not entitled to any enhancement towards future prospects. The amounts awarded by the Tribunal under different heads are not meagre and prayed for dismissal of the appeal.

8.Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the 2nd respondent-Insurance Company and perused the entire materials on recod.

9.From the materials available on record, it is seen that it is the contention of the appellants that the deceased was working as Mason and was earning a sum of Rs.7,500/- per month. They failed to prove 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.3,000/- per month as notional income of the deceased. The accident occurred in the year 2008 and the notional income fixed by the Tribunal is meagre. Therefore, a sum of Rs.6,500/- per month is fixed as notional income of the deceased. The appellants have claimed that the deceased was aged 26 years at the time of accident. They failed to prove the same. As per Ex.P2/postmortem certificate, the age of the deceased was mentioned as 22 years. In the absence of any material evidence, the Tribunal, considering Ex.P2/postmortem certificate, fixed the age of the deceased as 22 years and adopted multiplier '18' which is proper. The deceased was aged 22 years at the time of accident but the Tribunal has not granted any enhancement towards future prospects. As per the judgment of the Hon'ble Apex Court reported in 2017 (2) TNMAC 609 (SC), [National Insurance Company Limited Vs. Pranay Sethi and others], the appellants are entitled to 40% enhancement towards future prospects. There are five dependants of the deceased and the Tribunal erroneously deducted 1/3rd towards personal expenses instead of deducting 1/4th on the ground that appellants 3 and 5 are not the legal heirs of the deceased. The said reasoning given by the Tribunal for deducting 1/3rd is not correct and 1/4th has to be deducted towards personal expenses of the deceased. In view of the above, the amount awarded by the Tribunal towards loss of dependency is modified to Rs.14,74,200/- {Rs.9,100/- [(Rs.6,500/- + Rs.2,600/- (40% of Rs.6,500/-)] x 12 x 18 x 3/4}. The amounts awarded by the Tribunal towards loss of consortium, loss of estate, funeral expenses and transportation are meagre. Hence, the same are enhanced to Rs.40,000/- towards loss of consortium, Rs.15,000/- each towards loss of estate and funeral expenses respectively and Rs.5,000/- separately towards transportation. The Tribunal has not awarded any amount towards loss of love and affection to appellants 2 to 5. The appellants 2 to 5 are entitled to a sum of Rs.40,000/- towards loss of love and affection.

10.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	4,32,000/-	14,74,200/-	Enhanced
2.	Loss of love and affection to appellants 2 to 5	-	40,000/-	Granted
3.	Funeral expenses and Transportation	5,000/-	15,000/-	Enhanced
			5,000/-	Confirmed
4.	Loss of consortium to 1st appellant	10,000/-	40,000/-	Enhanced
5.	Loss of estate	10,000/-	15,000/-	Enhanced
	Total	Rs.4,57,000/-	Rs.15,89,200 /-	Enhanced by Rs.11,32,200 /-

11.In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.4,57,000/- is hereby enhanced to Rs.15,89,200/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The respondents are jointly and severally directed to deposit the award amount now determined by this Court, along with interest and costs, less the amount if any already deposited, 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.636 of 2009 on the file of the Motor Accidents Claims Tribunal, Additional District Court, Krishnagiri. On such deposit, the appellants 1, 3 and 4 are permitted to withdraw the respective share of the 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. The share of the minor appellants 2 and 5 are directed to be deposited in any one of the Nationalized Banks, till the minor appellants 2 and 5 attain majority. On such deposit, the 1st appellant, being the mother of the minor 2nd appellant and the 3rd appellant, being the father of the minor 5th appellant are permitted to withdraw the respective accrued interest, once in three months for the welfare of the minor appellants 2 and 5. The appellants are not entitled to any interest for the delay period as per the order of this Court dated 03.04.2013 made in M.P.No.1 of 2012 in C.M.A.SR.No.85395 of 2012. The appellants are directed to pay the necessary Court fee on the enhanced award amount. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

krk

To

1. The Additional District Judge,
   Motor Accidents Claims Tribunal,
   Krishnagiri.

Copy to

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

+1cc to Mr.Mukund R.Pandiyan, Advocate, SR39087
+1cc to Mr.J.Chandran, Advocate, SR39160

C.M.A.No.1272 of 2013

CO(VBA)
BDL/06/01/2021