IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No. 1335 of 2015

1.Angayarkanni

2.Minor Parvathi

3.Shanmuga Vadivam

4.Srinivasan .. Appellants/Petitioners

(minor 2nd appellant rep. by her mother and natural guardian, 1st appellant)

Vs.

1.R. Manickam

2.Royal Sundaram Alliance Insurance Co. Ltd.,
No. 8/H1, Mangalam Building,
4 Roads,
Salem 636 009. .. Respondents/Respondents

(1st respondent remained exparte before the Tribunal. Hence, notice is dispensed with.)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 21.11.2013, made in M.C.O.P.No. 38 of 2012, on the file of the Sub Court, (Motor Accident Claims Tribunal), Rasipuram.

For Appellants : Mr. Ma.P. Thangavel

For Respondents : Mr. K. Vinod
for M/s. Elveera Ravindran (For R2)

R1 :Exparte

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of the compensation granted by the award dated 21.11.2013, made in M.C.O.P.No. 38 of 2012, on the file of the Sub Court, (Motor Accident Claims Tribunal), Rasipuram.

2.The appellants are the claimants in M.C.O.P.No. 38 of 2012, on the file of the Sub Court, (Motor Accident Claims Tribunal), Rasipuram. They filed claim petition, claiming a sum of Rs.50,00,000/- as compensation for the death of one T.S. Karthikeyan, who died in the accident that took place on 19.01.2011.

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, insured with the 2nd respondent and directed the 2nd respondent-Insurance Company to pay a sum of Rs.36,11,000/- as compensation to the appellants.

4.Not being satisfied with the amounts awarded by the Tribunal in the award dated 21.11.2013, made in M.C.O.P.No. 38 of 2012, the appellants have come out with the present appeal.

5.Learned counsel appearing for the appellants contended that the deceased was a Director of Shri Parvathi Angalamman Spinning Mill and was having dealership in the name and style of S.K.P. Fabrics, Tiruchengode and was earning a sum of Rs.80,000/- per month. The appellants have produced Income Tax returns for the years 2008-2009, 2009-2010 and 2010-2011 to prove the same. The Tribunal ought to have considered the Income Tax returns filed by the appellants for 3 years and ought to have fixed the notional income of the deceased at Rs.20,957/- per month and granted 100% enhancement towards future prospects and prayed for fixing the monthly income by 7-8 times. There are four dependents of the deceased. The Tribunal reduced 1/3rd towards personal expenses of the deceased, instead of 1/4th and prayed for enhancement of the compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal has taken into account the Income Tax returns filed before the death of T.S. Karthikeyan and rightly rejected the Income Tax returns for the year 2010-2011. The appellants have not suffered any loss of income as the Shri Parvathy Angalamman Mill is family property in which the deceased was Director is being continued to run by his family members. The Tribunal erred in granting 50% enhancement towards future prospects. The amount of Rs.75,000/- awarded by the Tribunal towards loss of consortium is excessive. The appellants have not made out any case for enhancement of the same and prayed for dismissal of the appeal.

7.Heard learned counsel appearing for the appellants as well as the learned counsel appearing for the 2nd respondent and perused the materials available on record.

8.From the materials on record, it is seen that at the time of accident, the deceased was Director of Shri Parvathi Angalamman Spinning Mills and was earning a sum of Rs.80,000/- per month. The Tribunal considering the Income Tax returns filed by the appellants, fixed Rs.20,000/- as monthly income. The contention of the learned counsel appearing for the appellants that the Tribunal ought to have taken into account the Income Tax returns filed after death of T.S. Karthikeyan is without merits. The appellants have not filed any supporting documents to prove the income mentioned in the Income Tax returns. The Tribunal following the judgment of this Court, has rightly rejected the Income Tax returns filed for the year 2010-2011. The accident is of the year 2011. The monthly income fixed by the Tribunal is not meagre. The deceased was aged 33 years at the time of accident. The appellants are entitled for only 40% enhancement towards future prospects. The Tribunal has granted 50% enhancement towards future prospects. The same is reduced to 40%. All the four appellants are dependents of the deceased. The Tribunal erroneously held that fourth appellant, father of the deceased is not a legal heir and deducted 1/3rd towards personal expenses of the deceased, instead of 1/4th. After deducting 1/4th towards the personal expenses and applying the multiplier '16', the amount awarded by the Tribunal towards loss of dependency is modified to Rs. 40,32,000/- {[Rs.20,000/- + Rs.8,000/- (40% of Rs.20,000/-)] x 12 x 16 x 3/4}. After deducting 10% towards income tax, the loss of dependency arrives at Rs.36,28,800/- [Rs.40,32,000 - Rs.4,03,200 (Rs.40,32,000 x 10%)].

9.The Tribunal has awarded excess amount of Rs.50,000/- towards loss of consortium to the 1st appellant. The same is reduced to Rs.40,000/-. The amount of Rs. 10,000/- each awarded by the Tribunal towards loss of love and affection to the appellants 3 and 4, who are the parents of the deceased, is meagre and the same is enhanced to Rs.25,000/- each. The Tribunal has not awarded any amount towards loss of estate. The appellants are entitled to a sum of Rs.15,000/- towards the loss of estate. The amounts awarded by the Tribunal towards transportation and loss of love and affection to the 2nd appellant 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	34,56,000/-	36,28,800/-	Enhanced
2.	Loss of consortium	75,000/-	40,000/-	Reduced
3.	Loss of love and affection to 2nd appellant	50,000/-	50,000/-	Confirmed
4.	Loss of love and affection to the appellants 3 and 4	20,000/-	50,000/-	Enhanced
5.	Funeral expenses	5,000/-	15,000/-	Enhanced
6.	Transportation	5,000/-	5,000/-	Confirmed
7.	Loss of estate	-	15,000/-	Granted
	Total	36,11,000/-	38,03,800/-	Enhanced by Rs.1,92,800/-

9.In the result, the appeal is partly allowed and amount awarded by the Tribunal at Rs.36,11,000/- is enhanced to Rs.38,03,800/- along with interest and costs. The 2nd respondent-Insurance Company is directed to deposit the enhanced award amount, now determined by this Court, along with interest and costs, 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. 38 of 2012. On such deposit, the appellants 1, 3 & 4 are permitted to withdraw their share of the award amount along with proportionate interest and costs, as per the ratio of apportionment fixed by the Tribunal, after adjusting the amount, if any, already withdrawn, by filling necessary applications before the Tribunal. The share of the minor 2nd appellant is directed to be deposited in any one of the Nationalized Bank, till the minor attains majority. The 1st appellant, mother of the minor 2nd appellant is permitted to withdraw the accrued interest, once in three months for the welfare of the minor 2nd appellant. The appellants are directed to pay the court fee, if any, on the enhanced amount of Rs.1,92,800/-. No costs.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

gsa

To

1.The Subordinate Judge,
(Motor Accident Claims Tribunal),
Rasipuram.

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

+1cc to Mr.M/s. Elveera Ravindran, Advocate SR.No.1423

+1cc to Mr.Ma.P. Thangavel, Advocate SR.No.1774

C.M.A.No. 1335 of 2015

MR(CO)
GMY(23/03/2020)