

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No. 251 of 2020

1.C. Raja
2.R. Clara
3.R. Chandran
4.R. Lakahmi Bai
5.R. Geetha ... Appellants/Claimants

Vs.

1.R. Ravi Selvam
2.C. Madhava Naidu
3.The Oriental Insurance Company Limited,
rep. by its Divisional Manager,
having Office at Jambu Bala Complex,
Arcot Road, Vellore Town. ... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 29.07.2019, made in M.C.O.P. No. 138 of 2017, on the file of the I Additional District and Sessions Court, (Motor Accident Claims Tribunal), Vellore.

For Appellants : Mr. R. Nalliyappan

For Respondents : Mr. J. Chandran (for R3)

J U D G M E N T

This appeal has been filed for enhancement of the compensation granted by the award dated 29.07.2019, made in M.C.O.P. No. 138 of 2017, on the file of the I Additional District and Sessions Court, (Motor Accident Claims Tribunal), Vellore.

2.By consent of both the parties, the appeal is taken up for final disposal at the admission stage itself.

3.The appellants-claimants filed M.C.O.P. No. 138 of 2017, on the file of the I Additional District and Sessions Court, (Motor Accident Claims Tribunal), Vellore, claiming a sum of Rs.47,00,000/- as compensation for the death of one R. Valliama, who died in the accident that took place on 18.04.2011. They impleaded one of the sons of the deceased as the 1st respondent in the claim petition.

4.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the rider of the Motorcycle belonging to the 2nd respondent and directed the 3rd respondent as insurer of the vehicle to pay a sum of Rs.4,53,000/- as compensation to the appellants and 1st respondent.

5.Not being satisfied with the amounts awarded by the Tribunal in the award dated 29.07.2019, made in M.C.O.P. No. 138 of 2017, the appellants have come out with the present appeal.

6.Learned counsel appearing for the appellants contended that the deceased was working as a Construction Coolie and was earning a sum of Rs.20,000/- per month. The Tribunal fixed a meagre sum of Rs.6,000/- per month as notional income of the deceased. The Tribunal erred in deducting 1/4th towards the personal expenses of the deceased, when there are 6 dependants of the deceased. The Tribunal has not awarded any amount towards loss of estate and mental agony. The amounts awarded by the Tribunal under the heads, funeral expenses, loss of consortium and loss of love and affection are meagre and prayed for enhancement of the compensation.

7.Per contra, the learned counsel appearing for the 3rd respondent-Insurance Company contended that in the absence of any evidence let in by the appellants to prove the income of the deceased, the Tribunal fixed a sum of Rs.6,000/- per month as the notional income, which is not meagre. The Tribunal considering the fact there are six dependants of the deceased, rightly deducted 1/4th towards the personal expenses and awarded compensation towards loss of dependancy. The total compensation awarded by the Tribunal is not meagre. The appellants have not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

8.Heard learned counsel appearing for the appellants as well as the 3rd respondent and perused the materials available on record.

9. It is the contention of the appellants that the deceased was working as a Construction Coolie and was earning a sum of Rs.20,000/- per month. The appellants failed to prove the same. In the absence of any material evidence to prove the avocation and income of the deceased, the Tribunal fixed a sum of Rs.6,000/- per month as notional income of the deceased. The accident is of the year 2011. A sum of Rs.8,000/- per month is fixed as the notional income of the deceased. It is the claim of the appellants that the deceased was aged 59 years at the time of accident, but they have not filed any document to prove the same. The Tribunal rightly considering Ex.P8 - post mortem certificate, fixed age of the deceased as 62 years. There are six dependents of the deceased viz., the appellants and 1st respondent. Applying multiplier '7' and deducting 1/4th towards the personal expenses of the deceased, the amount awarded by the Tribunal towards loss of dependency is modified to Rs.5,04,000/- [Rs.8,000/- x 12 x 7 x 3/4]. The Tribunal has awarded a meagre sum of Rs.10,000/- towards loss of consortium to the husband of the deceased, 1st appellant. The same is enhanced to Rs.40,000/-. The sum of Rs.10,000/- awarded by the Tribunal towards funeral expenses is meagre. Hence, the same is enhanced to Rs.15,000/-. The Tribunal has not awarded any amount towards loss of estate. The appellants and the 1st respondent are entitled to a sum of Rs.15,000/- towards loss of estate. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are 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	3,78,000/-	5,04,000/-	enhanced
2.	Loss of estate	-	15,000/-	Granted
3.	Funeral expenses	10,000/-	15,000/-	Enhanced
4.	Loss of consortium to 1st appellant	10,000/-	40,000/-	Enhanced
5.	Loss of love and affection to appellants	50,000/-	50,000/-	Confirmed
6.	Transportation charges	5,000/-	5,000/-	Confirmed

	Total	4,53,000/-	6,29,000/-	Enhanced by Rs.1,76,000/-
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10. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.4,53,000/- is enhanced to Rs.6,29,000/- along with interest and costs. The 3rd 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. 138 of 2017. On such deposit, the appellants and 1st respondent are permitted to withdraw their share of the enhanced 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 filing necessary applications before the Tribunal. The appellants are directed to pay the court fee, if any, on the enhanced amount of Rs.1,76,000/-. No costs.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

gsa

To

1.The I Additional District and Sessions Judge,
(Motor Accident Claims Tribunal),
Vellore.

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

+1cc to M/s.R.Nalliappan, Advocate Sr.7997

C.M.A. No. 251 of 2020

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srg 09/12/2020