

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1462 of 2015

1.Venkatamma
2.Nagaveni
3.Kalpana
4.Pusphalatha
5.Minor Yogendra Prasad
(Minor rep by the next friend mother Venkatamma)
6.Rajamma ... Appellants/Claimants

Vs.

1.G.Shanmugham
2.The Oriental Insurance Co., Ltd.,
Rep. by its Branch Manager,
17-A, Krishnagiri Road, Ranipet. ... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 07.06.2010 in M.C.O.P.No.1664 of 2007 on the file of the Motor Accident Claims Tribunal, Principal District Judge, Krishnagiri.

For Appellants : Mr.A.Arul Kumar
for M/s. Mukund R. Pandiyan

For R2 : Mr.M.J.Vijayaraaghavan

J U D G M E N T

The Civil Miscellaneous Appeal has been filed by the appellants/claimants seeking enhancement of compensation granted by the Tribunal in the award dated 07.06.2010 in M.C.O.P.No.1664 of 2007 on the file of the Motor Accident Claims Tribunal, Principal District Judge, Krishnagiri.

2.The appellants are claimants in M.C.O.P.No.1664 of 2007 on the file of the Motor Accident Claims Tribunal, Principal District Judge, Krishnagiri. They filed the said claim petition claiming a sum of Rs.15,00,000/- as compensation for the death of one Venkatesh, who died in the accident that took place on 07.02.2007.

3.The Tribunal, after considering the pleadings, oral and documentary evidence, held that the accident occurred only due to the rash and negligent driving by the driver of the lorry, belonging to the first respondent and directed the 1st respondent/owner of the vehicle as well as the 2nd respondent/Insurance Company to jointly and severally pay a sum of Rs.3,98,000/- as compensation to the appellants/claimants.

4.Not being satisfied with the amounts awarded by the Tribunal, the appellants/claimants have come out with the present appeal seeking enhancement of compensation.

5.The learned counsel for the appellants contended that the deceased was doing Tomato business and was earning not less than Rs.5,500/- per month, at the time of accident. The Tribunal has fixed a meagre sum of Rs.3,000/- as monthly income of the deceased. The Tribunal ought to have fixed a sum of Rs.6,500/- as monthly income of the deceased. As per Ex.P2/post-mortem certificate, the deceased was aged 45 years at the time of accident and the Tribunal has not granted any enhancement towards future prospects. There are six dependants of the deceased. The Tribunal erred in deducting 1/4th as against 1/5th towards personal expenses of the deceased. The amounts granted by the Tribunal towards loss of consortium, loss of estate and transport & funeral expenses are meagre and prayed for enhancement of compensation.

6.Per contra, the learned counsel appearing for the second respondent contended that the appellants have not let in any material evidence to prove that the deceased was earning not less than Rs.5,500/- as monthly income at the time of accident. In the absence of material evidence, the Tribunal fixed a sum of Rs.3,000/- as monthly income, which is not meagre. 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.

7.Heard the learned counsel appearing for the appellant as well as the second respondent and perused the materials available on record.

8.It is the contention of the appellants that the deceased was aged 45 years at the time of accident and doing tomato business and was earning a sum of Rs.8,500/- per month. The appellants have failed to prove the said contention. In the absence of any material evidence, the Tribunal fixed a sum of Rs.3,000/- per month as notional income of the deceased. There are six dependants of the deceased. Hence, the Tribunal rightly

deducted 1/4th towards personal expenses of the deceased. The Tribunal has not granted any amount for future prospects. The accident is of the year 2007. In the considered opinion of this Court, the amount fixed by the Tribunal as monthly income of the deceased is meagre. Therefore, a sum of Rs.6,500/- per month is fixed as the notional income of the deceased. The claimants are entitled to 25% enhancement towards 'future prospects'. Accordingly, the compensation awarded by the Tribunal towards loss of income is enhanced to Rs.10,23,750/- (Rs.6,500/- + Rs.1,625/- (25% of Rs.6,500/-) X 12 X 14 X 3/4). The Tribunal has awarded a sum of Rs.10,000/- towards loss of consortium to the 1st appellant/claimant and the same is hereby enhanced to Rs.40,000/-. The amount granted by the Tribunal for loss of estate and funeral expenses & transport expenses are meagre and the same are enhanced to Rs.15,000/- and Rs.15,000/- respectively.

9.It is well settled that the Tribunal and the Courts have to award just compensation. Though the claimant has claimed lesser compensation, the Courts have power to grant just compensation more than the amount claimed by the claimant. Thus, the compensation awarded by the Tribunal is modified as follows:

S.N o	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of income	3,78,000	10,23,750	enhanced
2.	Loss of consortium to the 1 st appellant	10,000	40,000	enhanced
3.	Loss of estate	5,000	15,000	enhanced
4.	Transport & funeral expenses	5,000	15,000	enhanced
	Total	Rs.3,98,000/-	Rs.10,93,750/-	Enhanced by Rs.6,95,750/-

10.In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.3,98,000/- is hereby enhanced to Rs.10,93,750/- together with interest at the rate of 6% per annum from the date of petition till the date of deposit. The appellants are directed to pay the Court fee, if any on the enhanced amount of compensation. Both the 1st respondent as well as the 2nd respondent/Insurance Company 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. On such deposit, the appellants 1 to 4 and 6 are permitted to withdraw their respective share of the enhanced award amount 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, namely the fifth appellant is directed to be deposited in any one of the Nationalized Banks, till the minor/fifth appellant attains majority. On such deposit, the first appellant, being the mother of the minor, fifth appellant, is permitted to withdraw the accrued interest once in three months for the welfare of the minor/fifth appellant. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

gbi

To

1.The Principal District Judge,
Motor Accident Claims Tribunal,
Krishnagiri.

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

+1 CC to Mr.M.J.Vijayaraaghavan, Advocate sr 423.

+1 CC to Mr.Mukund R. Pandiyan, Advocate sr 1463.

WEB COPY

C.M.A.No.1462 of 2015

VBA (CO)
SP(17/07/2020)