IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1779 of 2012

Nirmala
A. Narasimhan (died) .. Appellant /Petitioner

Vs.

1.Sheik Ammanullah

2.The New India Assurance Co. Ltd.,
No.46, Moore Street,
Chennai 1. .. Respondents/Respondents

(R1 remained exparte before the Tribunal
and notice is dispensed with.)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 08.02.2012, made in M.C.O.P. No.4480 of 2007, on the file of the Chief Small Causes Court, (Motor Accident Claims Tribunal) Chennai.

For Appellant : Mr. K. Varadha Kamaraj

For Respondent : Mrs. R. Sree Vidhya (For R2)
For R1 : Set exparte(Tribunal)

J U D G M E N T

The matter is heard through "Video Conferencing".

This appeal has been filed for enhancement of the compensation granted by the Tribunal in award dated 08.02.2012, made in M.C.O.P. No.4480 of 2007, on the file of the Chief Small Causes Court, (Motor Accident Claims Tribunal) Chennai.

2.The appellant and the deceased A. Narasimhan who are the claimants initially filed M.C.O.P. No.4480 of 2007, on the file of the Chief Small Causes Court, (Motor Accident Claims Tribunal) Chennai, claiming a sum of Rs.8,00,000/- as compensation for the death of their son viz., N. Dillibabu, who died in the accident that took place on 09.10.2007. Pending claim petition, 2nd claimant viz., A. Narasimhan died.

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 Tipper Lorry belonging to the 1st respondent and directed the 2nd respondent who is the insurer of the offending vehicle to pay a sum of Rs.5,24,000/- as compensation to the appellant.

4.Not being satisfied with the amounts awarded by the Tribunal in the award dated 08.02.2012, made in M.C.O.P. No.4480 of 2007, the appellant has come out with the present appeal.

5.The learned counsel appearing for the appellant contended that the deceased was a Coolie cum Cleaner in the Tipper Lorry bearing Registration No. TN-74-L-7553 belonging to the 1st respondent and was earning a sum of Rs.250/- per day. The Tribunal erroneously fixed a meagre sum of Rs.4,500/- as his monthly income. The deceased was aged '19' years at the time of accident. The Tribunal taking into consideration the age of the appellant/mother of the deceased, adopted the multiplier '14', which is not correct. The Tribunal has not granted any enhancement towards future prospects. The amounts awarded by the Tribunal for loss of love and affection and funeral expenses are meagre. The Tribunal has not awarded any amount towards loss of estate. In any event, the amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of the compensation.

6.Mrs. R. Sree Vidhya, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the appellant failed to prove the avocation and income of the deceased. In the absence of any material evidence, the Tribunal fixed the notional income of the deceased at Rs.4,500/- per month. The notional income fixed by the Tribunal for the deceased who is a non-earning member aged 19 years at the time of accident, is excessive. The total compensation granted by the Tribunal under different heads is excessive. The appellant has not made out any case and is not entitled for any enhancement of compensation and prayed for dismissal of the appeal.

7.Heard learned counsel appearing for the appellant as well as the 2nd respondent-Insurance Company and perused the materials available on record.

8.From the materials on record, it is seen that it is the contention of the appellant that her son who died in the accident at the age of 19 years was working as a Coolie-cum-Cleaner in Tipper Lorry belonging to the 1st respondent and was earning a sum of Rs.250/- per day. The appellant has not produced any materials to substantiate her contention. In the absence of any material evidence with regard to avocation and income, the Tribunal fixed the notional income of the deceased at Rs.4,500/- per month. The accident is of the year 2007. The notional income fixed by the Tribunal is meagre. Considering the age of the deceased and date of accident, a sum of Rs.6,000/- per month is fixed as notional income of the deceased. The deceased was aged '19' years at the time of accident. The Tribunal has not granted any enhancement towards future prospects. The appellant is entitled to 40% enhancement towards future prospects. The Tribunal applied multiplier '14', taking into consideration the age of the appellant/mother of the deceased. As per the judgment of the Hon'ble Apex Court reported in 2017 (2) TNMAC 609 (SC) [National Insurance Company vs. Pranay Sethi & others], the age of the deceased is basis for applying the multiplier. The deceased was aged 19 years at the time of accident. The correct multiplier applicable is '18'. The deceased died as a Bachelor. The Tribunal erroneously deducted 1/3rd towards personal expenses of the deceased, as against 50%. Hence, deducting 50% towards personal expenses and applying the correct multiplier, the amounts awarded by the Tribunal towards loss of pecuniary benefits is modified to Rs.9,07,200/- {[Rs.6,000/- + Rs.2,400/- (40% of Rs.6,000/-)] x 12 x 18 x 1/2}. The Tribunal has awarded meagre amount towards loss of love and affection and funeral expenses. Hence, the same are enhanced to Rs.40,000/- towards loss of love and affection and Rs.15,000/- towards funeral expenses. The Tribunal has not awarded any amount towards loss of estate. Hence, a sum of Rs.15,000/- is awarded under the said head. 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 pecuniary benefits	5,04,000/-	9,07,200/-	Enhanced
2.	Loss of love and affection	10,000/-	40,000/-	Enhanced

3.	Loss of estate	-	15,000/-	Granted
4.	Funeral expenses	10,000/-	15,000/-	Enhanced
	Total	5,24,000/-	9,77,200/-	Enhanced by Rs.4,53,200/-

9.In the result, the appeal is allowed and the amount awarded by the Tribunal at Rs.5,24,000/- is enhanced to Rs.9,77,200/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd respondent-Insurance Company is directed to deposit the enhanced award amount, now determined by this Court, along with interest and costs, less the amount 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.4480 of 2007. On such deposit, the appellant is permitted to withdraw the enhanced award amount, now determined by this Court, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The appellant is directed to pay the court fee, if any, on the enhanced amount of Rs.4,53,200/-. No costs.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

gsa

To

1.The Chief Judge,
Small Causes Court,
(Motor Accident Claims Tribunal),
Chennai.

+1cc to Mr.K.Varadha Kamaraj, Advocate SR.35360
+1cc to Ms.R.sreevidhya, Advocate SR.35736

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