IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No. 2064 of 2013

1.Kannu
2.Anbazhagan
3.Mathiazhagan
4.Lakshmi
5.Arjunan
6.Anjalai
7.Rekha
8.Minor Kalaselvi .. Appellants
(minor rep. by her father and next friend, 1st appellant)

Vs.

1.Ganesh

2.Divisional Manager,
United India Insurance Co. Ltd.,
No. 46, Katpadi Road,
Vellore. .. Respondents

(1st respondent remained exparte before the Tribunal and hence, dispensed with.)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 25.11.2009, made in M.C.O.P. No. 215 of 2007, on the file of the District Court, (Motor Accident Claims Tribunal), Thiruvannamalai.

For Appellants : Ms. A. Subadra
for M/s. M. Malar

For Respondents : Mr. R. Rathnathara (For R2)

JUDGMENT

This appeal has been filed for enhancement of the compensation granted by the award dated 25.11.2009, made in M.C.O.P. No. 215 of 2007, on the file of the District Court, (Motor Accident Claims Tribunal), Thiruvannamalai.

2..The appellants-claimants filed M.C.O.P. No. 215 of 2007, on the file of the District Court, (Motor Accident Claims Tribunal), Thiruvannamalai, claiming a sum of Rs.10,00,000/- as compensation for the death of one Jegadhambal, who died in the accident that took place on 07.03.2007.

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 Container Lorry belonging to the 1st respondent and directed the respondents to jointly and severally pay a sum of Rs.14,91,340/- as compensation to the appellants.

4.Not being satisfied with the amounts awarded by the Tribunal in the award dated 25.11.2009, made in M.C.O.P. No. 215 of 2007, the appellants have come out with the present appeal.

5.Learned counsel appearing for the appellants contended that the deceased was working as Dry Fish Vendor and was earning a sum of Rs.8,000/- per month. The monthly income fixed by the Tribunal at Rs.2,400/- per month is meagre. There are 8 dependents of the deceased. The Tribunal ought to have deducted 1/5th towards personal expenses of the deceased, instead of 1/3rd. The Tribunal ought to have awarded compensation under the heads, damages, transportation expenses, mental agony and loss of estate. The amounts awarded by the Tribunal under other heads are meagre and prayed for enhancement of the compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that in the absence of any material evidence to prove the avocation and income of the deceased, the Tribunal fixed a sum of Rs.2,400/- per month as notional income of the deceased, which is not meagre. In any event, the total compensation granted by the Tribunal is not meagre and the appellants have not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

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

8.It is the contention of the appellants that the deceased was a Dry Fish Vendor and was earning a sum of Rs.8,000/- 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.2,400/- per month as notional income. The accident is of the year 2007 and the monthly income fixed by the Tribunal is meagre. Hence, a sum of Rs.6,000/- per month is fixed as the notional income of the deceased. The deceased was aged 55 years at the time of accident. The Tribunal has not granted any enhancement towards future prospects. Considering the age of the deceased, the appellants are entitled to 10% enhancement towards future prospects. There are eight dependents of the deceased. The Tribunal erroneously deducted 1/3rd towards personal expenses of the deceased, instead of 1/5th. Hence, after deducting 1/5th towards personal expenses of the deceased and applying the multiplier '11', the amount awarded by the Tribunal towards loss of dependency is modified to Rs.6,96,960/- {[Rs.6,000/- + Rs.600/- (10% of Rs.6,000/-)] x 12 x 11 x 4/5}. The amounts awarded by the Tribunal towards loss of consortium to the 1st appellant who is the husband of the deceased, loss of love and affection to the appellants 2 to 8 who are the children of the deceased and funeral expenses are meagre and hence, the same are enhanced to Rs.40,000/-, Rs.40,000/- and Rs.15,000/- respectively. The Tribunal has not awarded any amount towards loss of estate. The appellants are entitled to a sum of Rs.15,000/- towards loss of estate.

9.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	1,53,600/-	6,96,960/-	Enhanced
2.	Loss of love and affection to the appellants 2 to 8	14,000/-	40,000/-	Enhanced
3.	Loss of consortium to the 1st appellant	5,000/-	40,000/-	Enhanced
4.	Funeral expenses	2,000/-	15,000/-	Enhanced
5.	Loss of estate	-	15,000/-	Granted
	Total	**1,74,600/-**	**8,06,960/-**	**Enhanced by Rs.6,32,360/-**

10.In the result, the appeal is allowed and the amount awarded by the Tribunal at Rs.1,74,600/- is enhanced to Rs.8,06,960/- along with interest and costs. The respondents are jointly and severally directed to deposit the enhanced award amount, now determined by this Court, along with interest and costs, within a period of twelve weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P. No. 215 of 2007. On such deposit, the appellants 1 to 7 are permitted to withdraw their respective share of the award amount along with proportionate interest and costs, as per the ratio of apportionment fixed above, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. The share of the minor 8th appellant is directed to be deposited in any one of the Nationalized Banks, till the minor attains majority. The 1st appellant, father of the minor 8th appellant is permitted to withdraw the accrued interest, once in three months for the welfare of the minor 8th appellant. The appellants are directed to pay the court fee, if any, on the enhanced amount of Rs.6,32,360/-. No costs.

02.03.2020

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V.M.VELUMANI, J.,

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To

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

2.The District Judge,
(Motor Accident Claims Tribunal),
Thiruvannamalai.

C.M.A. No. 2064 of 2013

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