

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.168 of 2020

1.R.Subramani
2.S.Manikandan
3.S.Prasanth

.. Appellants/Petitioners

Vs.

1.M.Murugan

2.ICICI Lombard General
Insurance Co. Ltd.

Arihant plaza 1st floor, No.84&85

Walltax road, Chennai-600 003. .. Respondents/Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 11.06.2019 made in M.C.O.P.No.5046 of 2016 on the file of Motor Accident Claims Tribunal, Small Causes Court No.II, Chennai.

For Appellants : Mr.T.G.Balachandran

For R2 : Mr.K.Poomalai

J U D G M E N T

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 11.06.2019 made in M.C.O.P.No.5046 of 2016 on the file of Motor Accident Claims Tribunal, Small Causes Court No.II, Chennai.

2.The appellants are claimants in M.C.O.P.No.5046 of 2016 on the file of Motor Accident Claims Tribunal, Small Causes Court No.II, Chennai. The appellants filed the said claim petition claiming a sum of Rs.25,00,000/- as compensation for the death of one Jamuna, who died in the accident that took place on 12.04.2016.

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 car belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said car to pay a sum of Rs.11,70,000/- as compensation to the appellants at the first instance and recover the same from the 1st respondent, owner of the car, as the driver of the car belonging to the 1st respondent did not possess valid driving license to drive the said car and was under the influence of alcohol at the time of accident.

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

5. The learned counsel appearing for the appellants contended that the deceased was aged 42 years at the time of accident. She was a cook and was earning a sum of Rs.16,000/- per month. The appellants have examined one Kannagi, co-worker of the deceased as P.W.4. The Tribunal without considering the same, fixed only a meagre sum of Rs.7,000/- per month as notional income of the deceased. The deceased has taken treatment in the hospital from 12.04.2016 to 25.04.2016 for 14 days and then died on 29.04.2016. The Tribunal has not awarded any compensation towards pain & suffering. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6. Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the appellants have not marked any document to prove the income of the deceased. In the absence of any material evidence to prove the income of the deceased, the Tribunal has rightly fixed a sum of Rs.7,000/- per month as notional income of the deceased. The Tribunal after considering all the materials available on record, has awarded just compensation. The appellants have not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

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

8. It is the contention of the appellants that the deceased was a cook and was earning a sum of Rs.16,000/- per month. They have examined one Kannagi, co-worker of the deceased as P.W.4 to prove the avocation of the deceased. In the absence of any material evidence to prove the income of the deceased, the Tribunal fixed a sum of Rs.7,000/- per month as notional income of the deceased. The accident is of the year 2016 and the notional income fixed by the Tribunal is meagre. Hence, a sum of Rs.10,000/- per month is fixed as notional income of the

deceased. The Tribunal fixed the age of the deceased as 42 years at the time of accident as per Ex.P3/Post-mortem certificate, granted 25% enhancement towards future prospects, applied multiplier '14' and deducted 1/3rd towards personal expenses, which are proper. Thus, the compensation awarded by the Tribunal towards loss of dependency is hereby enhanced to Rs.14,00,000/- (Rs.10,000/- + 2500 [Rs.10,000/- + 25%] x 12 x 14 x 2/3). The Tribunal has not awarded any compensation towards loss of love & affection to the appellants 2 & 3 and hence, a sum of Rs.20,000/- each is awarded towards loss of love & affection to the appellants 2 & 3. Though the appellants have claimed compensation towards pain & suffering, they are not entitled to any compensation towards pain & suffering for the death of the deceased Jamuna. The amounts awarded by the Tribunal under all other heads 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 or reduced
1.	Loss of dependency	9,80,000	14,00,000	Enhanced
2.	Loss of consortium	40,000	40,000	Confirmed
3.	Loss of estate	15,000	15,000	Confirmed
4.	Funeral expenses	15,000	15,000	Confirmed
5.	Medical expenses	1,10,000	1,10,000	Confirmed
6.	Transportation	10,000	10,000	Confirmed
7.	Loss of love and affection to the appellants 2 & 3	-	40,000	Granted
	Total	11,70,000	16,30,000	Enhanced by Rs.4,60,000/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.11,70,000/- is hereby enhanced to Rs.16,30,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellants are directed to pay necessary Court fee, if any, on the enhanced compensation. 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 if any, within a period of six weeks from the date of receipt of a copy of this judgment at the first instance and recover the same from the 1st respondent. On such deposit, the appellants are permitted to withdraw their respective share from the enhanced award amount, as per the apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.II Judge

The Motor Accident Claims Tribunal
Small Causes Court, Chennai.

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

+1 cc to Mr.T.G.Balachandran, Advocate Sr.No. 11331

+1 cc to Mr.K.Poonamalai, Advocate Sr.No. 11247

GJ(CO)
RMP(03/12/2020)

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