

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3367 of 2011

1.K.Sundaram

2.S.Lavanya

.. Appellants/Claimants

(cause title accepted as per order of this Court dated 21.10.2011 made in M.P.No.2 of 2011 in C.M.A.SR.No.65673 of 2010)

Vs.

1.M.Sekar

2.United India Insurance Co.Ltd.

C/o.Motor Third Party Claims Office,
No.38, Anna Salai, Chennai - 600 002.

... Respondents /Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 20.11.2009 in M.C.O.P.No.5755 of 2005 on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Court, Fast Track Court No.V, Chennai.

For Appellants : Mr.T.G.Balachandran

For R2 : Mr.C.Paranthaman

J U D G M E N T

The Civil Miscellaneous Appeal has been filed by the appellants for enhancement of compensation granted by the Tribunal in the award dated 20.11.2009 in M.C.O.P.No.5755 of 2005 on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Court, Fast Track Court No.V, Chennai.

2.The appellants are claimants before the Tribunal in M.C.O.P.No.5755 of 2005 on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Court, Fast Track Court No.V, Chennai. They filed the said claim petition claiming a sum of Rs.5,00,000/- as compensation for the death of one T.Dhanam, who died in the accident that took place on 24.11.2005.

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 Jeep

belonging to the 1st respondent and the respondents 1 and 2 are liable to pay compensation to the appellants.

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 working as a Tailor in Gupta Garments, Manapakkam and was earning a sum of Rs.4,400/- per month, at the time of accident. But, the Tribunal has fixed a meagre sum of Rs.2,150/- as monthly income of the deceased. The Tribunal ought to have fixed the notional income of the deceased at Rs.4,400/- per month. The deceased was aged 28 years at the time of accident and the Tribunal erred in deducting Rs.650/- towards personal expenses and erred in adopting multiplier '15' instead of '18'. The amounts awarded by the Tribunal towards funeral expenses, loss of love and affection and loss of consortium are also meagre. The Tribunal has not awarded any amount towards loss of estate and transportation and prayed for enhancement of compensation.

6. Per contra, Mr.C.Paranthaman, learned counsel appearing for the second respondent contended that the appellants failed to prove the avocation and income of the deceased. In the absence of material evidence the notional income of the deceased fixed by the Tribunal at Rs.2150/- per month is not meagre. The Tribunal has rightly adopted multiplier '15' and deducted Rs.650/- towards personal expenses of the deceased. 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 28 years at the time of accident and working as a Tailor in Gupta Garments, Manapakkam and was earning a sum of Rs.4,400/- per month. To prove the same, they examined one Kanniammal as P.W.3, who is the employer of the deceased and produced Exs.P4 and P5/salary particulars. The Tribunal considering the evidence of P.W.3 and Ex.P4, fixed a sum of Rs.2,150/- per month as notional income of the deceased. In Ex.P4, the gross salary was mentioned as Rs.2,488/- and hence, a sum of Rs.2,488/- per month is fixed as the notional income of the deceased. The deceased was aged 28 years at the time of accident and the Tribunal has not granted any enhancement towards future prospects of the deceased. The appellants are entitled to 40% enhancement towards future prospects of the

deceased. The correct multiplier applicable is '17' and the Tribunal erroneously applied multiplier '15'. The Tribunal has deducted a sum of Rs.650/- towards personal expenses of the deceased, which is not correct. There are two dependents of the deceased and the Tribunal ought to have deducted 1/3rd towards personal expenses of the deceased. Accordingly, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.4,73,688/- {Rs.3,483/- [Rs.2,488/- + Rs.995/- (40% of Rs.2,488/-)] X 12 X 17 X 2/3}. The amounts awarded by the Tribunal towards funeral expenses, loss of love and affection and loss of consortium to the 1st appellant are meagre and the same are enhanced to Rs.15,000/-, Rs.25,000/- and 40,000/- respectively. The Tribunal has not awarded any amount towards loss of estate and transportation. Therefore, the appellants are entitled to a sum of Rs.15,000/- and Rs.5,000/- respectively towards loss of estate and transportation.

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 claimants. 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	2,70,000/-	4,73,688/-	Enhanced
2.	Funeral expenses	5,000/-	15,000/-	Enhanced
3.	Loss of love & affection	15,000/-	25,000/-	Enhanced
4.	Loss of consortium to the 1 st appellant	20,000/-	40,000/-	Enhanced
5.	Loss of estate	-	15,000/-	Granted
6.	Transportation	-	5,000/-	Granted
	Total	Rs.3,10,000/-	Rs.5,73,688 /-	Enhanced by Rs.2,63,688/-

10. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.3,10,000/- is hereby enhanced to Rs.5,73,688/- 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 the necessary Court fee on the enhanced amount of 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 to the credit of M.C.O.P.No.5755 of 2005 on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Court, Fast Track Court No.V, Chennai. On such deposit, the appellants are permitted to withdraw their respective share of the enhanced award amount now determined by this Court 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. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

gbi

To

1. The Additional District and Sessions Judge,
Motor Accident Claims Tribunal,
Fast Track Court No.V, Chennai.

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

+1 CC to Mr.T.G.Balachandran, Advocate sr 23095.

C.M.A.No.3367 of 2011

VBA (CO)

SP(11/11/2020)