

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.2960 OF 2012

1.Muthammal

2.Chinnaraj

3.Manivannan

.. Appellants/Petitioners

Vs.

1.Shanthi

2.The Oriental Insurance Company Ltd.,
Tiruvannamalai.

.. Respondents/Respondents

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 17.01.2006 made in M.C.O.P.No.209 of 2004 on the file of the Motor Accident Claims Tribunal, District Court, Thiruvannamalai.

For Appellants : Mr.F.Terry Chellaraaja

For Respondents : Mr.S.Arunkumar for R2

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the Tribunal in the award dated 17.01.2006 made in M.C.O.P.No.209 of 2004 on the file of the Motor Accident Claims Tribunal, District Court, Thiruvannamalai.

2.The appellants are the claimants in M.C.O.P.No.209 of 2004 on the file of the Motor Accident Claims Tribunal, District Court, Thiruvannamalai. They filed the above said claim petition, claiming a sum of Rs.5,00,000/- as compensation for the death of one Thangaraj, who died in the accident that took place on 06.09.1988.

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 lorry, belonging to the first respondent and directed the second respondent, being insurer of the said vehicle, to pay a sum of Rs.1,50,000/- as 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 lorry cleaner and was earning a sum of Rs.5,000/- per month. The Tribunal fixed only a meagre sum of Rs.1,050/- per month as notional income of the deceased and awarded a meagre amount towards loss of dependency. The Tribunal has not awarded any amounts towards loss of estate, transportation, mental agony and damage to clothes and articles. The amounts awarded by the Tribunal towards loss of love & affection and funeral expenses are also meagre and prayed for enhancement of compensation.

6.Per contra, the learned counsel appearing for the second respondent-Insurance Company contended that the Tribunal, in the absence of any material evidence to prove the avocation and income of the deceased, fixed a sum of Rs.1,050/- per month as notional income and the same is not meagre. The Tribunal after considering the materials available on record, has awarded compensation, which is not meagre. 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 learned counsel appearing for the second respondent-Insurance Company and perused the entire materials on record.

8.It is the contention of the appellants that the deceased was working as a cleaner in lorry at the time of accident and was earning a sum of Rs.5,000/- per month. The appellants failed to prove the said contention. In the absence of any material evidence to prove the income of the deceased, the Tribunal fixed a sum of Rs.1,050/- per month as notional income of the deceased. The accident is of the year 1988 and the notional income fixed by the Tribunal is meagre. Hence, a sum of

Rs.1,500/- per month is fixed as notional income of the deceased. The Tribunal having fixed the age of the deceased as 25 years based on Ex.P3-Post Mortem Certificate, has not awarded any enhancement towards future prospects. The appellants are entitled to 40% enhancement towards future prospects. The Tribunal has erroneously applied multiplier '17' as against '18' for awarding compensation towards loss of dependency. The deceased was a bachelor and the Tribunal erroneously deducted 1/3rd instead of 50% towards personal expenses of the deceased. Therefore, after deducting 50% towards personal expenses of the deceased and applying the proper multiplier '18', the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.2,26,800/- [(Rs.1,500/- + 600 (40% X Rs.1,500) x 12 x 18 x 1/2)]. The amount awarded by the Tribunal towards loss of love & affection is meagre and the same is hereby enhanced to Rs.40,000/-. The Tribunal has not awarded any amount towards loss of estate. Hence, a sum of Rs.5,000/- is awarded towards loss of estate. The amount awarded by the Tribunal towards funeral expenses is just and reasonable and hence the same is 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
1.	Loss of dependency	1,42,800/-	2,26,800/-	Enhanced
2.	Loss of love and affection	5,200/-	40,000/-	Enhanced
3.	Funeral expenses	2,000/-	2,000/-	Confirmed
4.	Loss of estate	-	5,000/-	Granted
	Total	1,50,000/-	2,73,800/-	Enhanced by Rs.1,23,800/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,50,000/- is hereby enhanced to Rs.2,73,800/- 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 amount of compensation. The second respondent 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. On such deposit, the appellants are permitted to withdraw their respective share of the award amount as per the ratio of apportionment fixed by the Tribunal, along with proportionate interest and costs, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vkrr

To

1. The District Judge,
Motor Accident Claims Tribunal,
Thiruvannamalai.

Copy To

The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mr.S.Arunkumar, Advocate, S.R.No.24185

+1cc to M/s.M.Malar, Advocate, S.R.No.24239

C.M.A.No.2960 of 2012

SAI (CO)
CS/01/02/2021