

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2871 of 2015

1.Kalaivani

2.Minor R.Barath @ Sabari
(Minor rep by his next friend
and mother Kalaivani)

3.Kittathal

4.A.Velusamy

..Appellants/Petitioners

Vs.

1.S.Radhakrishnan

2.The Managing Director,
Tamil Nadu State Transport Corporation
Coimbatore.

..Respondents/Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 15.03.2013 made in M.C.O.P.No.211 of 2010 on the file of Motor Accident Claims Tribunal, Sub Court, Perundurai.

For Appellants : Mr.R.Nalliyappan

For R2 : Mr.V.Udayakumar

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 15.03.2013 made in M.C.O.P.No.211 of 2010 on the file of Motor Accident Claims Tribunal, Sub Court, Perundurai.

2.The appellants are claimants in M.C.O.P.No.211 of 2010 on the file of Motor Accident Claims Tribunal, Sub Court, Perundurai. The appellants filed the said claim petition claiming a sum of Rs.20,00,000/- as compensation for the death

of one Rangaraj, who died in the accident that took place on 15.03.2010.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the 1st respondent/driver of the bus belonging to the 2nd respondent/Transport Corporation and directed the respondents to pay a sum of Rs.8,25,000/- 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/claimants contended that the deceased was aged 27 years at the time of accident and was earning a sum of Rs.20,000/- per month by working as Manager-cum-Supervisor in Ingrid Industries, Idyarpalayam, Coimbatore. They have examined P.W.3 & P.W.4/employers of the deceased and marked Ex.P18 & Ex.P21 / salary certificates to prove the avocation and income of the deceased. The Tribunal without considering the same, has fixed a meagre sum of Rs.6,000/- per month as notional income of the deceased. The Tribunal has not granted any enhancement towards future prospects. There are four dependants of the deceased and the Tribunal ought to have deducted 1/4th instead of 1/3rd towards personal expenses. The amounts awarded by the Tribunal towards loss of consortium and loss of love & affection are meagre and prayed for enhancement of compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent/Transport Corporation contended that P.W.3 and P.W.4, who are employers of the deceased, have not produced any sufficient document to prove the income of the deceased and therefore, the Tribunal has rightly fixed a sum of Rs.6,000/- per month as notional income of the deceased, which is not meagre. The Tribunal after considering all the materials available on record in proper perspective, has awarded just 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 2nd respondent/Transport Corporation and perused all the materials available on record.

8.It is the contention of the appellants that the deceased was earning a sum of Rs.20,000/- per month by working as Manager-cum-Supervisor in Ingrid Industries, Idyarpalayam, Coimbatore. They have examined one Loganathan as P.W.3, Manager of 'Energy Technic Works', who has deposed that the deceased was

working as part-time worker from 2001 onwards and was earning a sum of Rs.7,000/- per month and marked Ex.P18/salary certificate to prove the same. One Michael, Proprietor of Ingrid Industries, was examined as P.W.4, he has deposed that the deceased was working under him as Manager-cum-Supervisor from 2006 onwards and was earning a sum of Rs.13,000/- per month and marked Ex.P21/salary certificate to prove the same. However, the Tribunal has fixed a sum of Rs.6,000/- per month as notional income of the deceased holding that P.W.3 and P.W.4 have not produced attendance register or any sufficient document to prove the income of the deceased. The accident is of the year 2010 and the notional income fixed by the Tribunal is meagre. Hence, a sum of Rs.8,000/- per month is fixed as notional income of the deceased. The Tribunal has fixed the age of the deceased as 27 years at the time of accident as per Ex.P5/Post-mortem report, applied multiplier '16' and deducted 1/3rd towards personal expenses, which is not proper. As per the judgment of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC Supreme Court (Sarla Verma vs. Delhi Transport Corporation), the correct multiplier is '17'. There are four dependants of the deceased and the Tribunal ought to have deducted 1/4th instead of 1/3rd towards personal expenses. The Tribunal has not granted any enhancement towards future prospects and the appellants are entitled to 40% enhancement towards future prospects. Thus, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.17,13,600/- [(Rs.8,000/- + 3,200 (Rs.8,000/- + 40%) x 12 x 17 x 3/4)]. A sum of Rs.25,000/- and Rs.5,000/- awarded by the Tribunal towards loss of consortium & funeral expenses are meagre and the same are hereby enhanced to Rs.40,000/- & Rs.15,000/- respectively. The Tribunal has not awarded any amount towards loss of estate and hence, a sum of Rs.15,000/- is awarded towards loss of estate. The amounts awarded by the Tribunal towards loss of love & affection and transportation are just and reasonable and the same are hereby confirmed.

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 or reduced
1.	Loss of dependency	7,68,000	17,13,600	Enhanced

2.	Loss of consortium	25,000	40,000	Enhanced
3.	Funeral expenses	5,000	15,000	Enhanced
4.	Loss of love and affection	30,000	30,000	Confirmed
5.	Transportation	5,000	5,000	Confirmed
6.	Loss of estate	-	15,000	Granted
	Total	Rs.8,33,000/- - The Tribunal has awarded Rs.8,25,000/- -	Rs.18,18,600/- - -	Enhanced by Rs.9,93,600/- - -

10. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.8,25,000/- is hereby enhanced to Rs.18,18,600/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellants/claimants are directed to pay necessary Court fee, if any, on the enhanced compensation. It is made clear that the appellants/claimants shall not be entitled for any interest for the delay period on the amount of Rs.9,93,600/- enhanced by this Court as per the order of this Court dated 08.12.2015 made in M.P.No.1 of 2014 in C.M.A.SR.No.102619 of 2014. The 1st appellant being wife of the deceased is entitled to a sum of Rs.6,23,400/-, 2nd appellant being son of the deceased is entitled to a sum of Rs.3,98,400/-, 3rd appellant being mother of the deceased is entitled to a sum of Rs.4,48,400/- and the 4th appellant being father of the deceased is entitled to a sum of Rs.3,48,400/- as compensation. The respondents are 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 twelve weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants 1, 3 & 4/claimants 1, 3 & 4 are permitted to withdraw their respective share from the enhanced award amount along with proportionate interest and costs, less the amount if any, already withdrawn. The share of the minor/2nd appellant is directed to be deposited in any one of the Nationalised Banks till the minor attains majority. The 1st appellant being the mother of the 2nd appellant/minor is

permitted to withdraw the accrued interest once in three months for the welfare of the minor. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Subordinate Judge
The Motor Accident Claims Tribunal
Perundurai.

+1cc to Mr.R.Nalliyappan, Advocate in SR.NO..718
+1cc to Mr.V.Udayakumar, Advocate in SR.NO..791

C.M.A.No.2871 of 2015

SVI (CO)
RV(04/01/2021)



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