

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1709 of 2016

S.F.Noorjahan (died)

1.Sadhik Unnisa

2.Irbanudeen

3.Fathima

4.Imranudeen

5.Riswanudeen

6.Imadiasudeen

7.Illaasudeen

8.Dhahaj Unnisa ... Appellants/2nd to 9th Petitioner

(Amended as per order dated 20.01.2014

made in I.A.No.74 of 2014)

Vs.

1.Chandrasekaran

2.M/s.Jaya Varma Textiles (P) Limited,
No.61/2, Sastri Nagar,
Angeripalayam Main Road,
Tirupur.

3.United India Insurance Company Limited,
No.1 Nehru Street, Kumaran Road,
Tirupur - 641 601.

... Respondents/Respondents

(R1 and R2 remained exparte before Tribunal.

Hence, notice dispensed with)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 25.02.2014 made in M.C.O.P.No.820 of 2000 on the file of the Motor Accident Claims Tribunal, II Additional District Court, Tiruppur.

For Appellants : Mr.Ma.P.Thangavel

For R3 : Mr.C.Paranthaman

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 25.02.2014 made in M.C.O.P.No.820 of 2000 on the file of the Motor Accident Claims Tribunal, II Additional District Court, Tiruppur.

2. Originally one S.F.Noorjahan filed the claim petition, claiming a sum of Rs.5,00,000/- as compensation for the death of her son viz., Ikram @ Ikramudeen, who died in the accident that took place on 11.01.2000. Pending claim petition, the said S.F.Noorjahan died and therefore, the appellants 1 to 8 were impleaded as legal heirs of deceased S.F.Noorjahan, as per order dated 20.01.2014 made in I.A.No.74 of 2014.

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 second respondent and directed the third respondent-Insurance Company, being the insurer of the lorry to pay a sum of Rs.1,19,000/- being 25% of the total award amount as compensation to the appellants.

4. Challenging the portion of the award granting only 25% of the award amount and for enhancement of compensation, the appellants have come out with the present appeal.

5. The learned counsel appearing for the appellants contended that the Tribunal without any reason erroneously granted only 25% of the compensation arrived at. The deceased was doing Hosiery Goods (Seconds) & Allied products business and was earning a sum of Rs.5,000/- per month. The Tribunal fixed a meagre sum of Rs.3,500/- per month as notional income of the deceased. The deceased was aged 27 years at the time of accident and the Tribunal has not granted any enhancement towards future prospects. The amounts awarded by the Tribunal under different heads are meagre and prayed for granting entire compensation arrived at and also for enhancement of compensation.

6. Per contra, the learned counsel appearing for the third respondent-Insurance Company contended that pending claim petition, the mother of the deceased Ikram @ Ikramudeen died and the appellants are only sisters and brothers of the deceased and they are not dependants of the deceased. The Tribunal rightly granted 25% of the amounts arrived at as 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 third respondent and perused the entire materials on record.

8. It is the contention of the appellants that the deceased was aged 27 years and was running Hosiery Goods (Seconds) & Allied products business and was earning a sum of Rs.5,000/- per month. They failed to prove the said contention. In the absence of any material evidence with regard to avocation and income of the deceased, the Tribunal fixed a sum of Rs.3,500/- per month as notional income of the deceased. The accident occurred in the year 2000 and the notional income fixed by the Tribunal is not meagre. The deceased was aged 27 years at the time of accident and the Tribunal has not granted any enhancement towards future prospects. The appellants are entitled to 40% enhancement towards future prospects. The deceased was a bachelor at the time of accident and the Tribunal erroneously deducted 1/3rd towards personal expenses of the deceased. The Tribunal ought to have deducted ½ towards personal expenses of the deceased. In view of the above, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.4,99,800/- {Rs.4,900/- [Rs.3,500/- + Rs.1,400/- (40% of Rs.3,500/-)] X 12 X 17 X ½}. The Tribunal has not awarded any amounts under conventional heads. The appellants are entitled to a sum of Rs.40,000/- towards loss of love and affection, Rs.15,000/- towards funeral expenses and Rs.15,000/- towards loss of estate. The Tribunal without any valid reason granted only 25% of the total compensation arrived at as compensation to the appellants, which is erroneous. The appellants are entitled to entire amount arrived at as compensation. 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	1,19,000/-	4,99,800/-	Enhanced
2.	Loss of love and affection	-	40,000/-	Enhanced
3.	Funeral expenses	-	15,000/-	Enhanced
4.	Loss of estate	-	15,000/-	Enhanced
	Total	Rs.1,19,000/-	Rs.5,69,800/-	enhanced by Rs.4,50,800/-

9. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.1,19,000/- is hereby enhanced to Rs.5,69,800/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The third 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.820 of 2000 on the file of the Motor Accident Claims Tribunal, II Additional District Court, Tiruppur. On such deposit, the appellants are permitted to withdraw a sum of Rs.71,225/- each, as their respective share of the enhanced award amount now determined by this Court, along with proportionate interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. The appellants are directed to pay the necessary Court fee for Rs.4,50,800/-, the amount now enhanced by this Court as per the order of this Court dated 16.11.2015 made in M.P.No.2 of 2015 in C.M.A.SR.No.63993 of 2014. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The II Additional District Judge,
Motor Accident Claims Tribunal,
Tiruppur.

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

+1cc to Mr.Ma.P.Thangavel, Advocate Sr.2456
+1cc to Mr.C.Paranthaman, Advocate Sr.2200

C.M.A.No.1709 of 2016

rsk[col]
srg 31/07/2020