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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:24.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1744 of 2016

1.B.Selvi
2.B.Thulasimani
3.B.Geethamani

...Appellants/Claimants

Vs.

1.R.Suresh Kumar
2.R.Mahalingam
3.The National Insurance Company,
Branch II,
1272-1273, Palaniappa Complex,
Mettur Road,
Erode-638 011

...Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 14.03.2016 made in M.C.O.P.No.375 of 2015 on the file of the (Motor Accident Claims Tribunal), Special District Court, Erode.

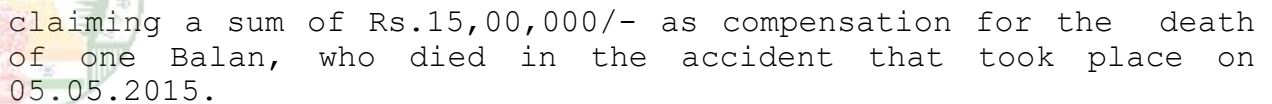
For Appellant : Mr.C.E.Pratap

For R3 : Mr.S.Vadivel NA for R1 & R4

J U D G M E N T

The Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the Tribunal in the award dated 14.03.2016 made in M.C.O.P.No.375 of 2015 on the file of the Motor Accident Claims Tribunal, Special District Court, Erode.

2.The appellants are the claimants in M.C.O.P.No.375 of 2015 on the file of the Motor Accident Claims Tribunal, Special District Court, Erode. They filed the said claim petition



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 bus belonging to the 2nd respondent and directed the 3rd respondent/Insurance Company, being the insurer of the bus to pay a sum of Rs.9,93,748/- as compensation to the appellants.

5.The learned counsel appearing for the appellants contended that the deceased was working as Agricultural Manager cum Tractor Driver and was earning a sum of Rs.15,000/- per month. But the Tribunal without considering the evidence of P.W.3 and Exs.P.10 to P.26, fixed a meagre sum of Rs.6,500/-per month as notional income of the deceased. The Tribunal ought to have fixed a sum of Rs.15,000/- per month as income of the deceased. The future prospects granted by the Tribunal at 30% is meagre. The amounts awarded by the Tribunal towards loss of dependency and loss of consortium are meagre. The Tribunal has not awarded any amount towards pain and sufferings and prayed for enhancement of compensation.

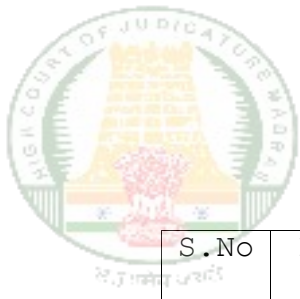
6.Per contra, the learned counsel appearing for the 3rd respondent/Insurance Company contended that the appellants have not produced any material evidence to prove that the deceased was earning a sum of Rs.15,000/- per month. In the absence of any material evidence to prove the avocation and income of the deceased, a sum of Rs.6,500/- per month fixed by the Tribunal as notional income of the deceased is not meagre. The amounts awarded by the Tribunal under different heads are 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 3rd respondent/Insurance Company and perused all the materials available on record.



8. It is the contention of the appellants that the deceased was working as Agricultural Manager cum Tractor driver and was earning a sum of Rs.15,000/- per month. To prove the same, the appellants examined one Duraisamy as P.W.3, who is the employer of the deceased and produced Exs.P10 to P26 to that effect. But the Tribunal rejected the evidence of P.W.3 on the ground that there is no document to show that the deceased worked under him and the version of P.W.3 and Exs.P.10 to P.26 are not sufficient to prove the above said contention. The reason given by the Tribunal for rejecting the evidence of P.W.3 and Exs.P.10 to P.26 is proper. The Tribunal fixed a sum of Rs.6,500/- per month as notional income of the deceased. The accident is of the year 2015 and the monthly income fixed by the Tribunal is meagre. Therefore, a sum of Rs.10,000/- per month is fixed as notional income of the deceased. As per Ex.P8/driving licence of the deceased, the deceased was aged about 49 years at the time of accident and the Tribunal has granted 30% enhancement towards future prospects, which is excessive. The appellants are entitled to only 25% enhancement towards future prospects of the deceased. The Tribunal rightly adopted multiplier '13' and deducted 1/3rd towards personal expenses of the deceased. Thus, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.13,00,000/- (Rs.12,500/- (Rs.10,000 + Rs.2,500/- (25% of Rs.10,000/-)) x 12 x 13 x 2/3). The amounts awarded by the Tribunal towards loss of consortium to the 1st appellant and funeral expense are excessive and hence, the same are reduced to Rs.40,000/- and Rs.15,000/- respectively. The Tribunal has awarded a sum of Rs. 10,000/- towards loss of love and affection to the 1st appellant in addition to loss of consortium. The 1st appellant is entitled to compensation only for loss of consortium. Therefore, the amount awarded by the Tribunal towards loss of love and affection to the 1st appellant is liable to be set aside and it is hereby set aside. The Tribunal has awarded a meagre sum of Rs.20,000/- towards loss of love and affection to the appellants 2 and 3 and the same is hereby enhanced to Rs.40,000/-. The amount awarded by the Tribunal towards transportation is just and reasonable and hence, the same is confirmed.

9. It is well settled that the Tribunal and 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
1.	Loss of dependency	8,78,748/-	13,00,000/-	Enhanced
2.	Funeral expense	25,000/-	15,000/-	Reduced
3.	Loss of Consortium to the 1 st appellant	50,000/-	40,000/-	Reduced
4.	Loss of love and affection	30,000/-	40,000/-	Enhanced
5.	Transportation	10,000/-	10,000/-	Confirmed
	Total	Rs.9,93,748/-	Rs.14,05,000/-	Enhanced by Rs.4,11,252/-

10. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.9,93,748/- is hereby enhanced to Rs.14,05,000/- 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 amount of compensation. The 3rd 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. 375 of 2015 on the file of Motor Accident Claims Tribunal, Special District Court, Erode. 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 interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. No costs.

Sd/-
Assistant Registrar(CS V)

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Sub Assistant Registrar



To
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1.The Special District Judge,
Motor Accidents Claims Tribunal,
Erode.

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

+1cc to Mr.S.Vadivel, Advocate Sr.15515

+1cc to Mr.C.E.Pratap, Advocate Sr.15884

C.M.A.No.1744 of 2016

vba[co]

srg 31/08/2021