

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2713 of 2013

1.Malaiyathal
2.Panneerselvam
3.Banupriya
4.Mahendi (minor)
(Minor rep. By her mother and
next friend, Malaiyathal) ... Appellants/Claimants

Vs.

1.M/s. Nagam Pvt Limited,
Old No.19, New No.3, 2nd Main Road,
Kottur Garden,
Kotturpuram,
Chennai 85.
(R1 remained exparte before the Tribunal)
2.HDFC General Insurance Co. Ltd.,
H.M.Geneva House, 1st Floor,
No.14, Tuningham Road,
Bangalore. ... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 07.08.2012, made in M.C.O.P. No.1636 of 2009, on the file of the Chief Court of Small Causes, (Motor Accident Claims Tribunal), Chennai.

For Appellants : Mrs. A. Subadra
for M/s. M. Malar

For Respondents : Mr. N. Baskaran (For R1)
for M/s. A.N. Viswanatha Rao

Ms. C. Harini (For R2)
for M/s. M.B. Gopalan

J U D G M E N T

The matter is heard through "Video Conferencing".

This appeal has been filed for enhancement of compensation granted by the award dated 07.08.2012, made in M.C.O.P. No.1636 of 2009, on the file of the Chief Court of Small Causes, (Motor Accident Claims Tribunal), Chennai.

2.The appellants-claimants filed M.C.O.P. No.1636 of 2009, on the file of the Chief Court of Small Causes, (Motor Accident Claims Tribunal), Chennai, claiming a sum of Rs.12,00,000/- as compensation for the death of one Palanikumar, who died in the accident that took place on 12.02.2009.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by driver of the Eicher Van belonging to the 1st respondent and directed the 2nd respondent - Insurance Company to pay a sum of Rs.7,52,000/- as compensation to the appellants at the first instance and recover the same from the 1st respondent.

4.Not being satisfied with the amounts awarded by the Tribunal to the appellants by the award dated 07.08.2012, made in M.C.O.P. No.1636 of 2009, the appellants have come out with the present appeal.

5.The learned counsel appearing for the appellants contended that the deceased was working as a Driver and was earning a sum of Rs.10,000/- per month and Rs.100/- per day as batta. The appellant proved the same by examining P.W.4 - employer of the deceased. The Tribunal failed to accept the same and erroneously fixed a meagre amount of Rs.6,000/- per month as notional income and granted only 30% enhancement towards future prospects. The Tribunal ought not to have deducted 50% towards personal expenses of the deceased, as there are four dependants. The Tribunal failed to grant any amount towards mental agony, damages to clothes and loss of estate. The amounts granted by the Tribunal towards loss of love and affection and funeral expenses are meagre and prayed for enhancement of the compensation.

6.Per contra, the learned counsel appearing for the 1st respondent as well as the 2nd respondent separately contended that the appellants failed to prove the avocation and income of the deceased as per law. Ex.P8 - series vehicular records of P.W.4's vehicle was created only for the purpose of claiming

more compensation from the respondents. The notional income fixed by the Tribunal is correct. The method adopted by the Tribunal for awarding compensation for loss of pecuniary benefits is also correct. The total compensation awarded by the Tribunal is not meagre. The appellants are not entitled for any enhancement and prayed for dismissal of the appeal.

7. Heard learned counsel appearing for the appellants, 1st respondent as well as the 2nd respondent and perused the materials available on record.

8. From the materials on record, it is seen that it is the contention of the appellants that the deceased was working as a Driver under P.W.4 and was earning a sum of Rs.10,000/- per month and Rs.100/- per day as batta. The appellants examined P.W.4 and marked Ex.P8 series vehicular records of P.W.4's vehicle, to show that P.W.4 was owner of the Eicher Van. The appellants have not filed any document to prove the income of the deceased. In the absence of any document with regard to income, the Tribunal fixed a sum of Rs.6,000/- per month as notional income of the deceased. The accident is of the year 2009. The amount fixed by the Tribunal as notional income is meagre. Considering the materials on record in entirety, a sum of Rs.6,500/- is fixed as notional income of the deceased. The deceased was aged 20 years at the time of accident. The Tribunal considering the age of the mother as 38 years, adopted multiplier '15'. As per the judgment of the Hon'ble Apex Court reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and others], age of the deceased is basis for applying multiplier. The deceased was aged '20' years at the time of accident. The correct multiplier applicable is '18'. The Tribunal has granted only 30% enhancement towards future prospects. As per the judgment of the Hon'ble Apex Court reported in 2017 (2) TN MAC 609 (SC) (cited supra), the appellants are entitled to 40% enhancement towards future prospects. The deceased was bachelor at the time of accident. The Tribunal rightly deducted 50% towards personal expenses of the deceased. Hence, the compensation awarded by the Tribunal towards loss of pecuniary benefits is modified to Rs.9,82,800/- {[Rs.6,500/- + Rs.2,600/- (40% of Rs.6,500/-)] x 12 x 18 x 50%}. The Tribunal has awarded a sum of Rs.10,000/- towards funeral expenses, which is meagre and the same is enhanced to Rs.15,000/-. The Tribunal failed to award any amount towards loss of estate. The appellants are entitled to a sum of Rs.15,000/- towards loss of estate. The amount awarded by the Tribunal towards loss of love and affection is just and reasonable and hence, the same is 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 pecuniary benefits	7,02,000/-	9,82,800/-	Enhanced
2.	Loss of love and affections	40,000/-	40,000/-	Confirmed
3.	Funeral expenses	10,000/-	15,000/-	Enhanced
4.	Loss of estate	15,000/-	15,000/-	Granted
	Total	7,52,000/-	10,52,800/-	Enhanced by Rs.3,00,800/-

9. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.7,52,000/- is enhanced to Rs.10,52,800/- along with 7.5% interest per annum from the date of petition till the date of deposit. The 2nd respondent is directed to deposit the enhanced award amount, now determined by this Court, along with interest and costs, less the amount already deposited, 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.1636 of 2009, at the first instance and recover the same from the 1st respondent. On such deposit, the appellants 1 to 3 are permitted to withdraw their share of the award amount with proportionate interest and costs, as per the ratio of apportionment fixed by the Tribunal, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. The share of the minor 4th appellant is directed to be deposited in any one of the Nationalized Bank, till the minor attains majority. The 1st appellant, mother of the minor 4th appellant is permitted to withdraw the accrued interest, once in three months for the welfare of the minor 4th appellant. No costs.

Sd/-
Assistant Registrar
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//True Copy//

Sub Assistant Registrar

gsa

To

1.The Chief Judge,
Court of Small Causes,
Chennai.

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

+1 cc to M/s.M.Malar, Advocate Sr.No. 38506

+1 cc to M/s.A.N.Viswanatharao, Advocate Sr.No. 38466

C.M.A.No.2713 of 2013

LN(CO)
RMP(08/04/2021)



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