IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.11.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.3559 OF 2012

1.Renuga

2.Ramya

3.Minor Mythili
(Minor represented by her next friend, mother and natural guardian, 1st appellant)

.. Appellants/ Claimants 1 to 3

Vs.

1.The New India Assurance Company Ltd.
No.102, Yercaud junction main road
Salem-636 004.

2.Elayaraja

.. Respondents/ Respondents 2 & 1

Prayer:
Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 12.03.2012 made in M.C.O.P.No.606 of 2009 on the file of Motor Accident Claims Tribunal, Additional District-cum-Special Court under Essential Commodities Act, Salem.

For Appellants : Mr.C.Anbu
for Mr.R.Syed Mustafa

For R1 : Mr.M.Krishnamoorthy

J U D G M E N T

The matter is heard through “Video-Conferencing”.

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 12.03.2012 made in M.C.O.P.No.606 of 2009 on the file of Motor Accident Claims Tribunal, Additional District-cum-Special Court under Essential Commodities Act, Salem.

2.The appellants are claimants in M.C.O.P.No.606 of 2009 on the file of Motor Accident Claims Tribunal, Additional District-cum-Special Court under Essential Commodities Act, Salem. They filed the said claim petition claiming a sum of Rs.50,00,000/- as compensation for the death of one Krishnan, who died in the accident that took place on 29.01.2009.

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 TATA Ace vehicle belonging to the 1st respondent and directed the 1st respondent as well as 2nd respondent/Insurance Company being insurer of the said TATA Ace vehicle to jointly and severally pay a sum of Rs.37,31,652/- 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 aged 46 years at the time of accident, he was working as a Sub-Divisional Engineer in BSNL and was earning a sum of Rs.30,000/- per month. The appellants have produced Exs.P10 to P12/salary certificates of the deceased to prove the avocation and income. The deceased had 13 years of service and if he was alive, he would have got promotion. The Tribunal failed to grant any enhancement towards future prospects. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6.The learned counsel appearing for the 2nd respondent/ Insurance Company contended that C.M.A.No.2307 of 2019 filed by the Insurance Company questioning the liability fixed on them in the very same award was dismissed by the Division Bench of this Court by judgment dated 16.10.2019. He further contended that the total compensation awarded by the Tribunal is excessive and prayed for dismissal of the appeal.

7.Heard the learned counsel appearing for the appellants as well as the 2nd respondent/Insurance Company and perused the entire materials available on record.

8.It is the contention of the appellants that the deceased was working as a Sub-Divisional Engineer in BSNL and was earning a sum of Rs.30,000/- per month. The appellants have produced Exs.P10 to P12/salary certificates of the deceased to prove the avocation and income. The Tribunal considering Ex.P12 fixed a sum of Rs.34,150/- as monthly income of the deceased. The Tribunal, applying multiplier 13 and after deducting 1/3rd towards personal expenses of the deceased, awarded a sum of

Rs.35,51,652/- towards loss of income. The deceased was aged 46 years at the time of accident. The Tribunal has not granted any enhancement towards future prospects. The appellants are entitled to 30% enhancement towards future prospects as per the judgment of the Hon'ble Apex Court reported in 2017(2)TNMAC 609 (SC) (National Insurance Company v. Pranay Sethi). The accident has occurred on 29.01.2009. During the financial year 2008-2009, upto Rs.1,50,000/-, there is nil tax. Thus, the calculation for arriving annual income is as follows :-

Monthly salary of the deceased	...	Rs.34,150/-
30% enhancement towards future prospects	...	Rs.10,245/-
		Rs.44,395/-
Annual income (44,395 x 12)	...	Rs.5,32,740/-

Income Tax Slab for financial year 2008-2009

Upto Rs.1,50,000/-	-	Nil
From Rs.1,50,001/- to Rs.3,00,000/- (10%) [Rs.3,00,000/- - Rs.1,50,000/- = Rs.1,50,000/- X 10%]	-	Rs.15,000/-
From Rs.3,00,000/- to Rs.5,00,000/- (20%) [Rs.5,00,000/- - Rs.3,00,000/- = Rs.2,00,000/- X 20%]	-	Rs.40,000/-
Above Rs.5,00,000/- (30%) (Rs.5,32,740 - Rs.5,00,000/- = Rs.32,740/-) Rs.32,740/- X 30%	-	Rs.9,822/-
		Rs.64,822/-
Annual income after deducting income tax (Rs.5,32,740/- - Rs.64,822/-)	-	Rs.4,67,918/-

Thus, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.40,55,289/- (Rs.4,67,918/- X 13 X 2/3). The Tribunal has awarded a sum of Rs.75,000/- and Rs.1,00,000/- towards loss of consortium and loss of love and affection, which are excessive and hence, the same are hereby reduced to Rs.40,000/- and Rs.80,000/- respectively. A sum of

Rs.5,000/- awarded by the Tribunal towards funeral expenses is meagre and hence, the same is hereby enhanced to Rs.15,000/-. 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. 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	35,51,652	40,55,289	Enhanced
2.	Loss of consortium	75,000	40,000	Reduced
3.	Loss of love and affection to the appellants 2 and 3	1,00,000	80,000	Reduced
4.	Funeral expenses	5,000	15,000	Enhanced
5.	Loss of estate	-	15,000	Granted
	Total	37,31,652	42,05,289	Enhanced by Rs.4,73,637/-

9.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.37,31,652/- is hereby enhanced to Rs.42,05,289/- 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 compensation. Both the respondents are jointly and severally 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 1 and 2 are permitted to withdraw their respective share of the award amount as per the apportionment fixed by the Tribunal along with proportionate interest and costs, less the amount if any, already withdrawn. The share amount of the minor/3rd appellant is directed to be deposited in any one of the Nationalised Banks till the minor attains majority. The 1st appellant, being mother of the minor/3rd appellant, is permitted to withdraw the accrued interest once in three months for the welfare of the minor. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Additional District Judge
(Motor Accident Claims Tribunal)
Special Judge under Essential Commodities Act
Salem.

Copy To

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

+1cc to Mr.C.Anbu, Advocate, S.R.No.35950

C.M.A.No.3559 of 2012

VGII(CO)
CS/05/05/2021