

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.06.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2774 of 2013

1.Margaret
2.Cyril
3.Oliver

.. Appellants/ Claimants

Vs.

1.Balasundaram
2.United India Insurance Company Limited,
Third Party Motor Claims Office,
Co-Operative Building,
No.38, Anna Salai,
Chennai - 600 002.

.. Respondents/ Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 31.08.2010 made in M.C.O.P.No.197 of 2006 on the file of the Motor Accident Claims Tribunal, Sub Court, Ponneri.

For Appellants : Mr.F.Terry Chellaraja

For R2 : Mr.D.Bhaskaran
R1 Ex parte

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 31.08.2010 made in M.C.O.P.No.197 of 2006 on the file of the Motor Accident Claims Tribunal, Sub Court, Ponneri.

2.The appellants are the claimants in M.C.O.P.No.197 of 2006 on the file of the Motor Accident Claims Tribunal, Sub Court, Ponneri. They filed the above said claim petition, claiming a sum of Rs.15,00,000/- as compensation for the death of one Vincent, who died in the accident that took place on 27.07.2005.

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 first respondent and directed the second respondent-Insurance Company, being the insurer of the lorry to pay a sum of Rs.8,40,000/- 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 contended that the deceased was owner of Cyril Printers and was earning a sum of Rs.10,000/- per month. But, the Tribunal fixed a meagre sum of Rs.7,800/- per month as notional income of the deceased. The deceased was aged 46 years at the time of accident and the Tribunal has not granted any enhancement towards future prospects of the deceased. The amounts awarded by the Tribunal towards loss of consortium to the 1st appellant, funeral expenses and loss of love and affection are meagre. The Tribunal has not awarded any amount towards loss of estate, damages to cloth and loss of expectation of life. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6. Per contra, the learned counsel appearing for the second respondent-Insurance Company contended that the Tribunal after considering Ex.P10/Income Tax returns for the year 2005-2006, has fixed a sum of Rs.7,800/- per month as notional income of the deceased and awarded a sum of Rs.8,11,200/- towards loss of dependency. Therefore, the appellants are not entitled to any enhancement towards loss of dependency. The appellants are not entitled to any enhancement towards future prospects and the amounts awarded by the Tribunal towards loss of consortium to the 1st appellant, loss of love and affection and funeral expenses 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 second respondent-Insurance Company and perused the entire materials on record.

8. It is the contention of the appellants that the deceased was aged 46 years and owner of Cyril Printers and was earning a sum of Rs.10,000/- per month. To prove the said contention, the appellants have produced Ex.P10/Income Tax returns for the year 2005-2006. The Tribunal after considering Ex.P10, fixed a sum of Rs.7,800/- per month as notional income of the deceased. The accident occurred in the year 2005 and the monthly income fixed by the Tribunal is proper. The deceased was aged 46 years but the Tribunal has not granted any enhancement towards future prospects of the deceased. The appellants are entitled to 25%

enhancement towards future prospects. The Tribunal has rightly adopted multiplier '13' and deducted 1/3rd towards personal expenses of the deceased. In view of the above, compensation awarded by the Tribunal towards loss of dependency is modified to Rs.10,14,000/- {Rs.9,750/- [Rs.7,800/- + Rs.1,950/- (25% of Rs.7,800/-)] X 12 X 13 X 2/3}. The amounts awarded by the Tribunal towards loss of consortium to the 1st appellant and funeral expenses are meagre and hence the same are hereby enhanced to Rs.40,000/- and Rs.15,000/- respectively. The Tribunal has not awarded any amount towards loss of estate. Therefore, a sum of Rs.15,000/- is awarded towards loss of estate. The compensation awarded by the Tribunal towards loss of love and affection is just and reasonable and hence, the same is hereby 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 dependency	8,11,200/-	10,14,000/-	Enhanced
2.	Loss of consortium to the 1 st appellant	10,000/-	40,000/-	Enhanced
3.	Loss of love and affection to appellants 2 and 3	15,000/-	15,000/-	Confirmed
4.	Funeral expenses	4,000/-	15,000/-	Enhanced
5.	Loss of estate	-	15,000/-	Granted
	Total	Rs.8,40,200/-	Rs.10,99,000/-	enhanced by Rs.2,58,800/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.8,40,200/- is hereby enhanced to Rs.10,99,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd 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.197 of 2006 on the file of the Motor Accident Claims Tribunal, Sub Court, Ponneri. 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 proportionate interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. It is made clear that the appellants are not entitled to any interest on Rs.2,58,800/-, the amount now enhanced by this Court, as per the order of this Court dated 02.08.2013 made in M.P.No.1 of 2013 in C.M.A.SR.No.97784 of 2012. The appellants are directed to pay necessary court fee, if any, on the amount now enhanced by this Court. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

- 1.The Subordinate Judge,
Motor Accident Claims Tribunal,
Ponneri.
- 2.The Section Officer,
VR Section,
High Court,
Madras.

C.M.A.No.2774 of 2013

MG (CO)
kk 14/12

सत्यमेव जयते

WEB COPY