

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2842 of 2013

1.Juliet Grace

2.Jaya Prakash

3.Jennifer Mary .. Appellants

Vs.

1.M/s.Ashok Leyland Limited,
No.19, Rajaji Salai, Chennai - 600 001.

2.Iffco Tokio General Insurance Co. Ltd.,
No.28/195, 1st and 2nd Floor,
North Usman Road, Chennai.

.. Respondents

(The 1st respondent exparte in lower court,
hence notice may be dispense with)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 15.11.2012 made in M.C.O.P.No.626 of 2009 on the file of the Motor Accident Claims Tribunal, Chief Judge, Court of Small Causes, Chennai.

For Appellants : Mr.K.Varadha Kamaraj

For R2 : Mr.J.Michael Visuvasam

R1: Exparte

J U D G M E N T

The Civil Miscellaneous Appeal is filed by the appellants/claimants seeking enhancement of compensation granted by the Tribunal in the award dated 15.11.2012 made in M.C.O.P.No.626 of 2009 on the file of the Motor Accident Claims Tribunal, Chief Court of Small Causes, Chennai.

2.The appellants are claimants in M.C.O.P.No.626 of 2009 on the file of the Motor Accident Claims Tribunal, Chief Court of Small Causes, Chennai. The appellants filed the said claim petition claiming a sum of Rs.10,00,000/- as compensation for the death of one Veda Manickam, who died in the accident that took place on 20.05.2008.

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 Ashok Leyland bus belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said bus to pay a sum of Rs.7,44,000/- as compensation to the appellants.

4.Not being satisfied with the quantum of compensation awarded by the Tribunal, the appellants have come out with the present appeal seeking enhancement of compensation.

5.Though the learned counsel appearing for the appellants/claimants raised various grounds in the grounds of appeal, at the time of arguments, he restricted his arguments only with regard to future prospects of the deceased, loss of consortium and loss of love & affection.

6.The learned counsel appearing for the appellants contended that the deceased was aged 50 years at the time of accident and was earning a sum of Rs.10,000/- per month by doing vegetable and water business. The Tribunal has not awarded any enhancement towards future prospects and loss of estate. The amounts awarded by the Tribunal towards loss of consortium, loss of love & affection and funeral expenses are meagre and prayed for enhancement of compensation.

7.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the Tribunal after considering the materials available on record, has awarded just compensation. The appellants have not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

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

9.It is the contention of the appellants that the deceased was running Jayam Store and was earning a sum of Rs.10,000/- per month at the time of the accident. To substantiate the said contention, Ex.P4/Rental Agreement, Ex.P6/Pan Card and Ex.P7/Form No.2 D were marked. It is seen from Ex.P7 that the

deceased was an Income Tax assessee. The annual income of the deceased for the period from 01.04.2005 to 31.03.2006 was shown as Rs.1,00,473/-. The case of the appellants is that the said shop was closed due to the death of the deceased. The accident had occurred on 20.05.2008. The appellants have not filed the latest Income Tax Return submitted by the deceased prior to the accident. Considering the age and occupation of the deceased, the Tribunal has fixed notional income of the deceased at Rs.8,000/- per month. The deceased was aged 51 years at the time of accident. The Tribunal has not awarded any enhancement towards future prospects. The appellants are entitled to 10% enhancement towards future prospects. Since there are three dependents, the Tribunal has deducted 1/3rd towards the personal expenses of the deceased and applied multiplier '11'. The amount awarded by the Tribunal towards loss of dependency is modified to Rs.7,74,400/- (Rs.8,000/- + 800 (Rs.8,000/- x 10%) 12 x 11 x 2/3). The amounts awarded by the Tribunal towards loss of consortium to the 1st appellant, loss of love & affection to the appellants 2 & 3 and funeral expenses are meagre and the same are enhanced to Rs.40,000/- Rs.40,000/- and Rs.15,000/- respectively. The Tribunal has not awarded any amount towards loss of estate. 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
1.	Loss of dependency	7,04,000	7,74,400	Enhanced
2.	Loss of consortium for 1 st appellant	10,000	40,000	Enhanced
3.	Loss of love & affection	20,000	40,000	Enhanced
4.	Funeral expenses	10,000	15,000	Enhanced
5.	Loss of estate	-	15,000	Granted
	Total	Rs.7,44,000/-	Rs.8,84,400/-	Enhanced by Rs.1,40,400/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.7,44,000/- is hereby enhanced to Rs.8,84,400/- 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. 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. It is made clear that the appellants shall not be entitled for any interest for the delay period on the amount of Rs.1,40,400/- enhanced by this Court as per the order of this Court dated 05.08.2013 in M.P.No.1 of 2013 in C.M.A.Sr.No.61029 of 2013. On such deposit, the appellants are permitted to withdraw their respective share of the enhanced award amount on the basis of apportionment fixed by the Tribunal along with proportionate interest and costs, less the amount if any, already withdrawn by filing necessary applications before the Tribunal. No costs.

Sd/-

Assistant Registrar(cs)

//True Copy//

Sub Assistant Registrar

mtl

To

1.The Chief Judge,
Motor Accidents Claims Tribunal,
Small Causes Court,
Chennai.

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

+lcc to Mr.K.Varadha Kamaraj , Advocate SR.No. 18114

+lcc to Mr.J.Michael Visuvasam , Advocate SR.No. 18354

C.M.A.No.2842 of 2013

A.SK(24/11/2020)

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