

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.684 of 2015

1.K.Anjala

2.Anthonisamy

.. Appellants/Claimants

Vs.

1.M.Sakthivel

2.New India Assurance Company Limited,
MTPC, No.45, Moore Street,
Chennai - 600 001.

.. Respondents/ Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 31.07.2008 made in M.C.O.P.No.378 of 2006 on the file of the Motor Accident Claims Tribunal, Principal District Court, Tiruvallur.

For Appellants : Mr.R.Neelakandan

For R2 : Mr.M.Krishnamoorthy

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 31.07.2008 made in M.C.O.P.No.378 of 2006 on the file of the Motor Accident Claims Tribunal, Principal District Court, Tiruvallur.

2.The appellants are the claimants in M.C.O.P.No.378 of 2006 on the file of the Motor Accident Claims Tribunal, Principal District Court, Tiruvallur.They filed the above said claim petition, claiming a sum of Rs.7,00,000/- as compensation for the death of their daughter viz., Rejina @ Rejina Mary who died in the accident that took place on 22.10.2005.

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 lorry belonging to the 1st respondent and directed the respondents 1 and 2, being

the owner and insurer of the lorry respectively to jointly and severally pay a sum of Rs.1,50,000/- 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 aged 20 years and was working as a Teacher in St. Mary Primary School, Vellore and was earning a sum of Rs.5,000/- per month at the time of accident. But, the Tribunal fixed a meagre sum of Rs.3,000/- per month as notional income of the deceased. The Tribunal has adopted multiplier '5' based on the age of the parents of the deceased, which is not correct. The Tribunal ought to have adopted correct multiplier taking into consideration the age of the deceased. The deceased was aged 20 years at the time of accident and the Tribunal has not granted any enhancement towards future prospects. The amounts awarded by the Tribunal towards loss of love and affection and funeral expenses are meagre and prayed for enhancement of compensation.

6. Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the appellants have not produced the attendance register of the deceased to prove the avocation and income. Therefore, a sum of Rs.3,000/- per month fixed by the Tribunal as notional income of the deceased is not meagre. The Tribunal has rightly adopted multiplier '5' taking into consideration the age of the parents of the deceased. The Tribunal ought to have deducted $\frac{1}{2}$ towards personal expenses of the deceased instead of deducting $\frac{1}{3}$ rd as the deceased was a bachelor at the time of accident. Hence, the appellants are not entitled to any enhancement towards future prospects. 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 2nd respondent-Insurance Company and perused entire materials on record.

8. It is the contention of the appellants that the deceased was aged 20 years and was working as a Teacher in St. Mary Primary School, Vellore and was earning a sum of Rs.5,000/- per month at the time of accident. To prove the same, the appellants produced Ex.P5/salary certificate of the deceased for the month of September 2005. But, the Tribunal fixed a sum of Rs.3,000/-

per month as notional income of the deceased on the ground that the appellants have not filed any copy of salary register for having received a sum of Rs.5,000/- per month as salary. The appellants have not produced any other document like attendance register to substantiate Ex.P5/salary certificate. In view of the same, the Tribunal fixed notional income of the deceased at Rs.3,000/- per month. The accident occurred in the year 2005. The notional income fixed by the Tribunal is meagre and hence, a sum of Rs.4,000/- per month is fixed as notional income of the deceased. The appellants contended that deceased was aged 20 years at the time of accident, but as per Ex.P2/post-mortem certificate, the deceased was aged 26 years at the time of accident and the Tribunal has not granted any enhancement towards future prospects of the deceased. The appellants are entitled to 40% enhancement towards future prospects of the deceased. The Tribunal erroneously adopted multiplier '5' taking into consideration the age of the parents of the deceased. As per the judgment of the Hon'ble Apex Court reported in 2017 (2) TNMAC 609 (SC), [National Insurance Co. Ltd., Vs. Pranay Sethi and others], the age of the deceased is the basis for adopting multiplier. The proper multiplier applicable is '17'. The deceased was a bachelor at the time of accident and the Tribunal erroneously deducted 1/3rd towards personal expenses of the deceased instead of deducting 1/2. In view of the above, compensation awarded by the Tribunal towards loss of dependency is modified to Rs.5,71,200/- {Rs.5,600/- [Rs.4,000/- + Rs.1,600/- (40% of Rs.4,000/-)] X 12 X 17 X 1/2}. The Tribunal has awarded a sum of Rs.10,000/- towards loss of love and affection to the appellants, which is meagre and the appellants are entitled to a sum of Rs.40,000/- each towards loss of love and affection. The amount awarded by the Tribunal towards funeral expenses is meagre and the same is enhanced to Rs.15,000/-. The amount awarded by the Tribunal towards loss of estate is just and reasonable and hence, the same is confirmed.

9. It is well settled that the Tribunal and the 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	1,20,000/-	5,71,200/-	Enhanced

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
2.	Funeral expenses	5,000/-	15,000/-	Enhanced
3.	Loss of love and affection	10,000/-	80,000/-	Enhanced
4.	Loss of estate	15,000/-	15,000/-	Confirmed
	Total	Rs.1,50,000/-	Rs.6,81,200/-	enhanced by Rs.5,31,200/-

10. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.1,50,000/- is hereby enhanced to Rs.6,81,200/- 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 the necessary Court fee on the enhanced amount of compensation now determined by this Court. The respondents 1 and 2 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, to the credit of M.C.O.P.No.378 of 2006 on the file of the Motor Accident Claims Tribunal, Principal District Court, Tiruvallur. 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. No costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal District Judge,
Motor Accident Claims Tribunal,
Tiruvallur.

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

+1cc to Mr.M.Krishnamoorthy , Advocate SR.No. 12540

C.M.A.No.684 of 2015

A.SK(21.01.2021)