

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2983 of 2013

1.S.Uyyalu
2.S.Sasikala
3.M.Vidhya (minor)
4.M.Pandian (minor)
(Minors 3 & 4 are represented by
next friend mother S.Uyyalu, 1st appellant)
5.V.Duraisamy
6.D.Kasi .. Appellants /Petitioners

Vs.

1.S.Babu
(1st respondent remained ex-parte in
lower Court, hence, notice may be dispense with)
2.Shriram General Insurance Company Ltd.,
No.62, 2nd Floor, City Centre Complex,
T.Nagar, Chennai-17. .. Respondents /Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 19.02.2013 in M.C.O.P.No.1271 of 2010 on the file of the Motor Accident Claims Tribunal, XVI Additional Court, Chennai.

For Appellants : Mr.K.Varadha Kamaraj
For R2 : Mr.K.Poomalai

J U D G M E N T

The Civil Miscellaneous Appeal has been filed by the appellants seeking enhancement of compensation granted by the Tribunal in the award dated 19.02.2013 in M.C.O.P.No.1271 of 2010 on the file of the Motor Accident Claims Tribunal, XVI Additional Court, Chennai.

2.The appellants are claimants before the Tribunal in M.C.O.P.No.1271 of 2010 on the file of the Motor Accident Claims Tribunal, XVI Additional Court, Chennai. They filed the said claim petition claiming a sum of Rs.10,00,000/- as compensation for the death of one Mani, who died in the accident that took place on 26.02.2010.

3.The Tribunal, after considering the pleadings, oral and documentary evidence, held that the accident occurred only due to the rash and negligent driving by the driver of the lorry, belonging to the first respondent and directed both 1st respondent/owner of the lorry as well as the 2nd respondent/Insurance Company to jointly and severally pay a sum of Rs.8,00,000/- 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 working as a Supervisor in a firm and was earning a sum of Rs.10,000/- per month, at the time of accident. But, the Tribunal has fixed a meagre sum of Rs.4,500/- as monthly income of the deceased. The Tribunal ought to have fixed a sum of Rs.6,500/- as monthly income of the deceased. The deceased was aged 44 years at the time of accident. The Tribunal has applied multiplier '13' as against the correct multiplier '15'. There are six dependants of the deceased. The Tribunal erred in deducting 1/4th as against 1/5th towards personal expenses of the deceased. The amounts granted by the Tribunal towards funeral expenses, loss of love and affection and loss of consortium are also meagre. The Tribunal has not awarded any amount towards loss of estate and prayed for enhancement of compensation.

6.Per contra, the learned counsel appearing for the second respondent contended that the appellants have not let in any material evidence to prove that the deceased was earning a sum of Rs.10,000/- as monthly income at the time of accident. In the absence of material evidence, the Tribunal fixed a sum of Rs.4,500/- as monthly income, which is not meagre. The amounts awarded by the Tribunal under different heads are also not meagre and prayed for dismissal of the appeal.

7.Heard the learned counsel appearing for the appellant as well as the second respondent and perused the materials available on record.

8.It is the contention of the appellants that the deceased was aged 44 years at the time of accident and working as a Supervisor in a firm and was earning a sum of Rs.10,000/- per month. The appellants have failed to prove the said contention. In the absence of any material evidence, the Tribunal fixed a sum of Rs.4,500/- per month as notional income of the deceased. There are six dependents of the deceased. Hence, the Tribunal rightly deducted 1/4th towards personal expenses of the deceased. The accident is of the year 2010. In the considered opinion of

this Court, the amount fixed by the Tribunal as monthly income of the deceased is meagre. Therefore, a sum of Rs.6,500/- per month is fixed as the notional income of the deceased. The claimants are entitled to 25% enhancement towards 'future prospects' as deceased was 45 years at the time of accident, as per Ex.P3-post mortem certificate and Ex.P4-death certificate. Accordingly, the compensation awarded by the Tribunal towards loss of income is modified to Rs.9,50,625/- (Rs.6,500/- + Rs.1,625/- (25% of Rs.6,500/-) X 12 X 13 X 3/4). In view of above calculation granting 25% enhancement towards future prospects, the sum of Rs.1,63,500/- awarded by the Tribunal towards future prospects is set aside by this Court. The Tribunal has awarded only a sum of Rs.10,000/- towards funeral expenses and the same is hereby enhanced to Rs.15,000/-. The amount granted by the Tribunal for loss of consortium is excessive and the same is reduced to Rs.40,000/-. The Tribunal awarded a sum of Rs.50,000/- towards loss of love and affection, which is reasonable and the same is confirmed by this Court. The Tribunal has not awarded any amount towards loss of estate. A sum of Rs.15,000/- is granted towards loss of estate.

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.	Future loss of dependency	5,26,500	9,50,625	enhanced
2.	Loss of love & affection	50,000	50,000	confirmed
3.	Loss of consortium	50,000	40,000	reduced
4.	Funeral expenses	10,000	15,000	enhanced
5.	Loss of estate	-	15,000	granted
6.	Future prospects	1,63,500	-	set aside
	Total	Rs.8,00,000/-	Rs.10,70,625/-	Enhanced by Rs.2,70,625/-

10.In the result, this Civil Miscellaneous Appeal is partly

allowed and the compensation awarded by the Tribunal at Rs.8,00,000/- is hereby enhanced to Rs.10,70,625/- 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 Court fee, if any on the enhanced amount of compensation. Both the 1st respondent/owner of the vehicle as well as the 2nd respondent/Insurance Company 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, 2, 5 and 6 are permitted to withdraw their respective share of the enhanced award amount 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. The share of the minors, namely the appellants 3 and 4 are directed to be deposited in any one of the Nationalized Banks, till the minors/appellants 3 and 4 attain majority. On such deposit, the first appellant, being the mother of the minors, appellants 3 and 4, is permitted to withdraw the accrued interest once in three months for the welfare of the minors/appellants 3 and 4. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

gbi

To

1. Motor Accident Claims Tribunal,
The XVI Additional Judge,
Chennai.

Copy To

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

- +1cc to Mr.K.Varadhakamaraj, Advocate, S.R.No. 19429
+1cc to Mr.K.Poomalai, Advocate, S.R.No. 19648

C.M.A.No.2983 of 2013

KJ(CO)

GN(04/02/2021)