

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.890 of 2015

- 1.Devagi
- 2.Minor Venkatesan
- 3.Minor Vijyakumar

..Petitioners/Appellants

(minors 2 & 3 are rep. by their mother
guardian 1st appellant)

Vs.

1. Jagadeeswari
2. Divisional Manager,
United India Insurance Company Ltd.,
No.46, Katpadi Salai,
Vellore.
3. Superintending Engineer,
Tamil Nadu Electricity Board,
Electricity System,
Vengikkal, Tiruvannamalai.

... Respondents/
Respondents

(1st respondent remained exparte before the Tribunal

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 19.10.2010 made in M.C.O.P.No.858 of 2006 on the file of the Motor Accident Claims Tribunal, District Judge, Thiruvannamalai.

For Appellants : Mr.F.Terry Chella Raja

For Respondents: Mr.G.Udayasankar for R2
Mr.S.R.Shanmugadoss,
Standing Counsel for TNEB for R3

R1 : Exparte

JUDGMENT

This Civil Miscellaneous Appeal has been filed for enhancement of compensation of the award dated 19.10.2010 made in M.C.O.P.No.858 of 2006 on the file of the Motor Accident Claims Tribunal, District Judge, Thiruvannamalai.

2.The appellants are the claimants in M.C.O.P.No.858 of 2006 on the file of the Motor Accident Claims Tribunal, District Judge, Thiruvannamalai. They filed the above said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the death of one Arumugam who died in the accident that took place on 31.05.2006.

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 first respondent as well as the second respondent, as insurer of the vehicle to jointly and severally pay a sum of Rs.4,51,000/- as compensation to the appellants. The Tribunal dismissed the claim petition as against the third respondent.

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 load man in the first respondent's lorry and was earning a sum of Rs.6,000/- per month at the time of accident. The Tribunal fixed a sum of Rs.3,000/- as monthly income of the deceased, which is meagre. The deceased was aged 34 years at the time of accident and the Tribunal has not granted any enhancement towards future prospects. The Tribunal failed to grant any amount towards loss of estate. The total compensation granted by the Tribunal under other heads are also meagre and prayed for enhancement of compensation.

6.Per contra, Mr.G.Udayasankar, learned counsel appearing for the second respondent-Insurance Company contended that the appellants did not let in any evidence to prove that the deceased was working as a loadman in the first respondent's lorry and was earning a sum of Rs.6,000/- per month at the time of accident. In the absence of any material evidence to substantiate their contention, the Tribunal rightly fixed a sum of Rs.3,000/- as monthly income, which is not meagre. The amounts awarded by the Tribunal under different heads are not meagre and prayed for dismissal of the appeal.

7.Mr.S.R.Shanmugadoss, learned standing counsel for the

third respondent contended that the claim petition was dismissed against the third respondent and no relief is sought against the third respondent and prayed for dismissal of the appeal against the third respondent.

8. Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the respondents 2 and 3 and perused the entire materials on record.

9. It is the contention of the appellants that the deceased was working as a load man in the first respondent's lorry and was earning a sum of Rs.6,000/- per month at the time of accident. The appellants have not let in any evidence to prove the avocation and income of the deceased. In the absence of material evidence, the Tribunal fixed a sum of Rs.3,000/- as monthly income of the deceased. The accident occurred in year 2006 and the monthly income fixed by the Tribunal is meagre. Hence, a sum of Rs.5,500/- is fixed as monthly income of the deceased. According to the appellants, the deceased was aged 34 years at the time of accident. The Tribunal considering Ex.P3/Post-mortem certificate, fixed age of the deceased as 34 years and applied multiplier 17. The multiplier applied by the Tribunal is not correct. As per the judgment of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC Supreme Court (Sarla Verma vs. Delhi Transport Corporation), the correct multiplier is 16. The Tribunal has not granted any 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), 40% enhancement is granted towards future prospects. In view of the above, after deducting 1/3rd towards the personal expenses of the deceased, the compensation awarded by the Tribunal towards loss of earning is modified to Rs.9,85,600/- {[Rs.5,500/- + Rs.2,200/- (40% of Rs.6,000)] X 12 X 16 X 2/3}. A sum of Rs.20,000/- and Rs.2,000/- awarded by the Tribunal towards loss of consortium and funeral expenses are meagre and 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 and hence, a sum of Rs.15,000/- is awarded towards loss of estate. The amounts awarded by the Tribunal towards loss of love & affection, damage to clothes and transportation are just and reasonable and hence, the same are hereby confirmed.

10. 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 earning	4,08,000/-	9,85,600/-	Enhanced
2.	Consortium	20,000/-	40,000/-	Enhanced
3.	Funeral expenses	2,000/-	15,000/-	Enhanced
4.	Transportation	500/-	500/-	Confirmed
5.	Loss of damage to clothes & articles	500/-	500/-	Confirmed
6.	Love & affection	20,000/-	20,000/-	Confirmed
7.	Loss of estate	-	15,000/-	Granted
	Total	Rs.4,51,000/-	Rs.10,76,600/-	enhanced by Rs.6,25,600/-

11. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.4,51,000/- is hereby enhanced to Rs.10,76,600/- 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. 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. On such deposit, the first appellant is permitted to withdraw her share of the enhanced award amount now determined by this Court, as per the ratio of apportionment fixed by the Tribunal, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. The share of the minor appellants 2 and 3 are directed to be deposited in any one

of the Nationalized Bank, till the minor appellants 2 and 3 attain majority. On such deposit, the first appellant, being the mother of the minor appellants 2 and 3 is permitted to withdraw the accrued interest, once in three months for the welfare of the minor appellants 2 and 3. This appeal is dismissed as against the third respondent. No costs.

Sd/-
Assistant Registrar(CS I)

//True Copy//

Sub Assistant Registrar

vkr

To

1. The Superintending Engineer,
Tamil Nadu Electricity Board,
Electricity System,
Vengikkal, Tiruvannamalai.
2. The District Judge,
Thiruvannamalai.
3. The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mr.G.Udayasankar, Advocate, S.R.No.6556
+1cc to Mr.M.Malar, Advocate, S.R.No.6381

C.M.A.No.890 of 2015

JP(CO)
CS/20/07/2020

सत्यमेव जयते

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