

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3052 of 2013

1.K.Nagaraj
2.Dheivanai

.. Appellants/Claimants

Vs.

1.B.Chandra Praba

2.The Oriental Insurance Co. Ltd,
No.281, Cross Cut Road,
PB No.2907, Gandhipuram,
Coimbatore.

... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 24.09.2010 made in M.C.O.P.No.87 of 2010 on the file of the Motor Accident Claims Tribunal, Sub Court, Sathyamangalam.

For Appellants : Mr.Ma.Pa.Thangavel

For R2 : Mr.E.Rajadurai for
Mr.N.Vijayaraghavan

R1 : Exparte

JUDGMENT

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 24.09.2010 made in M.C.O.P.No.87 of 2010 on the file of the Motor Accident Claims Tribunal, Sub Court, Sathyamangalam.

2.The appellants are claimants in M.C.O.P.No.87 of 2010 on the file of the Motor Accident Claims Tribunal, Sub Court, Sathyamangalam. They filed the said claim petition claiming a sum of Rs.8,00,000/- as compensation for the death of their son viz., Prakash, who died in the accident that took place on 17.09.2007.

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 1st respondent and directed respondents to jointly and severally, pay a sum of Rs.4,97,000/- 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.The learned counsel appearing for the appellants contended that the deceased was aged 19 years at the time of accident and was earning a sum of Rs.6,000/- per month by working as a driver. The Tribunal fixed a meagre sum of Rs.4,000/- per month as notional income of the deceased. The correct multiplier applicable is 18 as the deceased was only 19 years at the time of accident. The Tribunal erred in applying multiplier 15 taking into consideration the age of the mother of the deceased. The Tribunal has not awarded any amount towards future prospects and loss of estate. 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 2nd respondent/Insurance Company contended that the appellants have failed to prove the avocation and income of the deceased. In the absence of any material evidence, the Tribunal rightly fixed the notional income of the deceased at Rs.4,000/- per month. The Tribunal after considering both oral and documentary evidence in proper perspective has granted just compensation. 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 2nd respondent/Insurance Company and perused all the materials available on record.

8.It is the contention of the appellants that the deceased was aged 19 years at the time of accident and was earning a sum of Rs.6,000/- per month by working as a driver. The appellants have not filed any document to substantiate the said contention. In the absence of any material evidence, the Tribunal fixed notional income of the deceased at Rs.4,000/- per month. The accident is of the year 2007. The monthly income of the deceased fixed by the Tribunal is meagre. Hence, a sum of Rs.5,000/- per month is fixed as notional income of the deceased. The Tribunal fixed the age of the deceased as 19 years at the time of accident considering Ex.P2/postmortem certificate and Ex.P6/driving license. The Tribunal has not awarded any

enhancement towards future prospects. The appellants are entitled to 40% enhancement towards future prospects. The Tribunal has applied multiplier 15, taking into consideration the age of the mother of the deceased which is not correct. As per the judgment of the Hon'ble Apex Court reported in "2017(2) TN MAC 609(SC) (National Insurance Company Limited versus Pranay Sethi)" the age of the deceased has to be taken into account for applying multiplier. Accordingly the multiplier applicable for the deceased aged 19 years is '18'. The Tribunal deducted 1/3rd towards personal expenses of the deceased, which is not proper. The deceased died as a bachelor. Hence, 50% has to be deducted towards personal expenses of the deceased. Thus, the amount awarded by the Tribunal towards loss of income is modified to Rs.7,56,000/- [(Rs.5,000 + 2,000 (Rs.5,000/- x 40%) x 12 x 18 x 1/2)]. The amounts awarded by the Tribunal towards loss of love & affection, transport expenses and funeral expenses are meagre. Hence, the same are enhanced to Rs.40,000/-, Rs.5,000/- and Rs.15,000/- towards loss of love & affection, transport expenses and funeral expenses respectively. The Tribunal has not awarded any amount towards loss of estate. Hence, 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.	Loss of income	4,80,000	7,56,000	Enhanced
2.	Loss of love and affection	10,000	40,000	Enhanced
3.	Transport expenses	2,000	5,000	Enhanced
4.	Funeral expenses	5,000	15,000	Enhanced
5.	Loss of estate	-	15,000	Granted
	Total	Rs.4,97,000/-	Rs.8,31,000/-	Enhanced by Rs.3,34,000/-

10.In the result, this Civil Miscellaneous Appeal is

partly allowed and the compensation awarded by the Tribunal at Rs.4,97,000/- is hereby enhanced to Rs.8,31,000/- 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. It is made clear that the appellants shall not be entitled for any interest for the delay period on the enhanced amount of Rs.3,34,000/- as per the order of this Court dated 20.08.2013 made in M.P.No.3 of 2013 in C.M.A.SR.No.72532 of 2012. The respondents 1 & 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 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. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

mtl

To

The Subordinate Judge,
Motor Accidents Claims Tribunal,
Sathyamangalam.

Copy To

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

+1cc to Mr.Ma.P.Thangavel, Advocate, S.R.No. 23920
+1cc to Mr.N.Vijayaraghavan, Advocate, S.R.No. 24182

C.M.A.No.3052 of 2013

SSI (CO)
GN(04/11/2020)