IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3060 of 2013

1.Andal
2.Malar
3.Danam
4.Jaya
5.Thilagam (minor)
6.Pichandi (minor)
(Appellants 5 and 6 minors are represented by their mother Andal as natural guardian and next friend)

7.Ranganayaki .. Appellants /Petitioners

Vs.

1.V.Adhikesavalu
(R1 remained exparte before the Tribunal)

2.The New India Assurance Co.Ltd.
No.45, Moore street
Chennai-1. .. Respondents/Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 18.03.2008 made in M.C.O.P.No.3809 of 2006 on the file of Motor Accident Claims Tribunal, Chief Judge, Small Causes Court, Chennai.

For Appellants : Mrs.A.Subadra
for Mr.V.Velu

For R2 : Mr.K.Vinod

R1 : Exparte

J U D G M E N T

This matter is heard through 'Video-conferencing'.

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated

18.03.2008 made in M.C.O.P.No.3809 of 2006 on the file of Motor Accident Claims Tribunal, Chief Small Causes Court, Chennai.

2.The appellants are the claimants in M.C.O.P.No.3809 of 2006 on the file of Motor Accident Claims Tribunal, Chief Small Causes Court, Chennai. They filed the said claim petition claiming a sum of Rs.6,00,000/- as compensation for the death of one Perumal, who died in the accident that took place on 17.08.2006.

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 van belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said van to pay a sum of Rs.3,95,000/- 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 appellant contended that the deceased was working as a mason and was earning a sum of Rs.200/- per day. The Tribunal failed to consider the evidence of P.W.1 to P.W.3, the documents marked by the appellants and erroneously fixed a meagre sum of Rs.4,000/- per month as notional income of the deceased. The deceased was aged 48 years at the time of accident. The Tribunal erroneously fixed age of the deceased as 55 years at the time of accident and applied multiplier '10', which is not correct. There are seven dependents of the deceased and the Tribunal erroneously deducted 1/3rd instead of 1/5th towards personal expenses. The amounts awarded by the Tribunal towards loss of love and affection and loss of consortium are meagre and prayed for enhancement of compensation.

6.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 and failed to produce any document with regard to age of the deceased. The Tribunal considering the age mentioned in Ex.P4/Post-mortem Certificate, fixed the age of the deceased as 55 years, applied multiplier '10' as per the Motor Vehicles Act, which is correct. The learned counsel further contended that the date of the award passed by the Tribunal is 18.03.2008. The date of the judgment of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC Supreme Court (Sarla Verma vs. Delhi Transport Corporation) is 15.04.2009. Therefore, the said judgment is not applicable to the facts of the present case. The notional income fixed by the Tribunal is not meagre. The total compensation 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 the entire materials on record.

8.It is the contention of the appellants that the deceased was working as a mason and was earning a sum of Rs.200/- per day. The appellants examined P.W.3, co-worker of the deceased, who deposed that the deceased was working as a mason under him for more than six months and he used to work on all the days, except Sundays and get Rs.250/- per day and Rs.50/- as batta. The appellants except oral evidence of P.W.3, did not produce any acceptable evidence with regard to income of the deceased. In the absence of any evidence with regard to income of the deceased, the Tribunal fixed a sum of Rs.4,000/- per month as notional income of the deceased. The accident is of the year 2006. The amount fixed by the Tribunal is meagre. Hence, a sum of Rs.6,000/- as claimed by the appellants is fixed as notional income of the deceased. The appellants have contended that the deceased was aged 48 years at the time of accident. But the appellants have not produced any materials to substantiate the same. In view of the same, the Tribunal considering the age mentioned in Ex.P4/Post-mortem certificate, rightly fixed age of the deceased as 55 years. The Tribunal applied multiplier '10'. As per the II Schedule of the Motor Vehicles Act and 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 applicable is '11'. The contention of the learned counsel appearing for the 2nd respondent/Insurance Company that the multiplier mentioned in the judgment of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC Supreme Court (Sarla Verma vs. Delhi Transport Corporation), is not applicable as the date of the judgment is 15.04.2009 and the date of the award passed by the Tribunal in the present case is 18.03.2008, is without merits. The Hon'ble Apex Court in Sarla Verma's case considered the accident is of the year 1988 and enumerated the multiplier applicable in respect of the age of the deceased. In the judgment of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC Supreme Court cited supra, the multiplier applicable for the deceased aged 55 years is '11'. In II Schedule of the Motor Vehicles Act also, the multiplier applicable for the deceased aged 55 years is '11'. Hence, the appellants are entitled to compensation by applying multiplier '11'. The Tribunal has not granted any enhancement towards future prospects. The appellants are entitled to 10% enhancement towards future prospects. There are seven dependents of the deceased. The Tribunal ought to have deducted 1/5th instead of 1/3rd towards personal expenses of the deceased. Thus, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs. 6,96,960/- (Rs.6,000/- + 600 [Rs.6,000/- X 10%] X 12 X 11 X 4/5). The Tribunal awarded a sum of Rs.5,000/- altogether towards transportation, funeral expenses and damage to articles, which is meagre. Hence, Rs.5,000/- and Rs.15,000/- are awarded towards transportation and funeral expenses & damage to articles respectively. A sum of Rs.15,000/- awarded by the Tribunal towards loss of consortium to the 1st appellant is meagre and hence, the same is hereby enhanced to Rs.40,000/-. The Tribunal has not awarded any compensation towards loss of estate and hence, a sum of Rs.15,000/- is awarded towards loss of estate. A sum of Rs.50,000/- and Rs.5,000/- awarded by the Tribunal towards loss of love and affection to the appellants 2 to 6 and 7th appellant respectively are just and reasonable and hence, the same are hereby 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 or reduced
1.	Loss of dependency	3,20,000	6,96,960	Enhanced
2.	Loss of consortium	15,000	40,000	Enhanced
3.	Loss of love and affection to the appellants 2 to 6	50,000	50,000	Confirmed
4.	Loss of love and affection to the 7th appellant	5,000	5,000	Confirmed
5.	Transportation, funeral expenses and damage to the articles	5,000	5,000 15,000	Enhanced
6.	Loss of estate	-	15,000	Granted

	Total	3,95,000	8,26,960	Enhanced by Rs.4,31,960/-

10.In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.3,95,000/- is hereby enhanced to Rs.8,26,960/- 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 on the enhanced compensation. It is made clear that the appellants are not entitled for any interest for the delay period on the amount of Rs.4,31,960/- enhanced by this Court as per the order of this Court dated 26.08.2013 made in M.P.No.1 of 2013 in C.M.A.SR.No.27355 of 2013. 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. On such deposit, the appellants 1 to 4 and 7 are permitted to withdraw their respective share of the award amount as per the apportionment fixed by the Tribunal along with proportionate interest and costs, less the amount if any, already withdrawn. The share amounts of the minors/appellants 5 & 6 are directed to be deposited in any one of the Nationalised Banks till the minors attain majority. The 1st appellant being mother of the minors/appellants 5 & 6 is permitted to withdraw the accrued interest once in three months for the welfare of the minors. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To
1.The Chief Judge
(Motor Accident Claims Tribunal
Small Causes Court, Chennai.

2.The Section Officer
V.R.Section, High Court, Chennai.

+1cc to Mr.V.Velu, Advocate, S.R.No. 38213
+1cc to Mr.K.Vinod, Advocate, S.R.No. 38162

C.M.A.No.3060 of 2013

VBA(CO)
GN(04/02/2021)