

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3107 of 2013

1.G.Sumathy
2.Kaliammal

.. Appellants/Claimants

Vs.

1.P.Shanthi
(1st respondent remained exparte before the Tribunal)

2.United India Insurance Company Ltd.,
No.82, North Mada Street,
Mylapore, Chennai 04. .. Respondents /Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 15.12.2010 made in M.C.O.P.No.1654 of 2007 on the file of the Motor Accident Claims Tribunal, Chief Judge/ Small Causes Court, Chennai.

For Appellants : Mr.F.Terry Chellaraja
for Mr.V.Velu

For Respondents : Ms.I.Malar for R2
R1-Exparte

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the Tribunal in the award dated 15.12.2010 made in M.C.O.P.No.1654 of 2007 on the file of the Motor Accident Claims Tribunal, Chief Small Causes Court, Chennai.

2.The appellants are the claimants in M.C.O.P.No.1654 of 2007 on the file of the Motor Accident Claims Tribunal, Chief Small Causes Court, Chennai. They filed the above said claim petition, claiming a sum of Rs.6,00,000/- as compensation for the death of one Ganesan, who died in the accident that took place on 09.02.2007.

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 first respondent and directed the second respondent, being insurer of the said lorry to pay a sum of Rs.4,90,000/- 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 mason and was earning a sum of Rs.7,500/- per month at the time of accident. The Tribunal fixed only a meagre sum of Rs.4,500/- per month as notional income of the deceased. The deceased was aged 45 years at the time of accident and the Tribunal has not granted any enhancement towards future prospects. The Tribunal has not awarded any compensation towards loss of estate. The amounts awarded by the Tribunal under different heads are also meagre and prayed for enhancement of compensation.

6.Per contra, the learned counsel appearing for the second respondent/Insurance Company contended that the Tribunal, in the absence of any material evidence to prove the avocation and income of the deceased, fixed a sum of Rs.4,500/- per month as notional income and the same is not meagre. The Tribunal after considering the materials available on record, has awarded compensation, which is 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 second 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.7,500/- per month at the time of accident. The appellants failed to prove the said contention. In the absence of any material evidence to prove the avocation and income of the deceased, the Tribunal fixed a sum of Rs.4,500/- per month as notional income of the deceased and the same is meagre. The accident is of the year 2007 and hence, a sum of Rs.6,500/- per month is fixed as notional income of the deceased. The deceased was aged 50 years at the time of accident. The Tribunal has not granted any enhancement towards future prospects. The appellants are entitled to 25% enhancement towards future prospects. By

deducting 1/3rd towards personal expenses of the deceased and applying multiplier 13, the amount awarded by the Tribunal towards loss of pecuniary benefits is modified to Rs.8,45,000/- [Rs.6,500/- + Rs.1,625/- (Rs.6,500/- of 25%) x 12 x 13 x 2/3]. The amounts awarded by the Tribunal towards loss of consortium to the first appellant is meagre and hence, the same is hereby enhanced to Rs.40,000/-. The Tribunal has altogether awarded a sum of Rs.2,000/- towards funeral expenses and transportation which is not proper. The appellants are entitled to a sum of Rs.15,000/- towards funeral expenses and Rs.5,000/- towards transportation separately. The Tribunal has not awarded any amount towards loss of estate. Hence, a sum of Rs.15,000/- is awarded towards loss of estate. The amount awarded by the Tribunal towards loss of love and affection is just and reasonable and hence, the same is 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
1.	Loss of pecuniary benefits	4,68,000/-	8,45,000/-	Enhanced
2.	Loss of consortium to the 1 st appellant	10,000/-	40,000/-	Enhanced
3.	Loss of love and affection to the 2 nd appellant	10,000/-	10,000/-	Confirmed
4.	Funeral expenses & Transportation	2,000/-	15,000/- 5,000/-	Enhanced
5.	Loss of estate	-	15,000/-	Granted
	Total	4,90,000/-	9,30,000/-	Enhanced by Rs.4,40,000/-

10.In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at

Rs.4,90,000/- is hereby enhanced to Rs.9,30,000/- 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 amount of compensation. The second respondent 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 are permitted to withdraw their respective share of the award amount, as per the ratio of apportionment fixed by the Tribunal, along with proportionate interest and costs, after adjusting the amount, if any, already withdrawn, by filling necessary applications before the Tribunal. No costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

vkr
To

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

+1 cc to M/s.M.Malar Advocate sr24233
+1 cc to Mr.T.Ravichandran Advocate sr23924

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