IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.10.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3461 of 2013

1.S.Kamala
2.Sunderarajan ... Appellants /Petitioners

Vs.

1.Panimalar Engineering College,
No.23, Railway Colony 2nd Street,
Nelson Manickam Road, Chennai 29.

(R1 was set exparte in the Trial Court
and notice is dispensed with)

2.United India Insurance Co. Ltd.,
No.134, Greams Road,
Chennai 600 006. ... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 07.10.2013, made in M.C.O.P. No.2114 of 2011, on the file of the Chief Judge, Small Causes Court, (Motor Accident Claims Tribunal) Chennai.

For Appellants : Mr. F. Terry Chella Raja

For Respondents : Mr. P. Sankaranarayanan (For R2)
R1 : Exparte

J U D G M E N T

The matter is heard through "Video Conferencing".

This appeal has been filed seeking enhancement of the compensation granted by the award dated 07.10.2013, made in M.C.O.P. No.2114 of 2011, on the file of the Chief Judge, Small Causes Court, (Motor Accident Claims Tribunal) Chennai.

2.The appellants - claimants filed M.C.O.P. No.2114 of 2011, on the file of the Chief Judge, Small Causes Court, (Motor Accident Claims Tribunal) Chennai, claiming a sum of Rs.50,00,000/- as compensation for the death of their son Gopinath, who died in the accident that took place on 08.06.2010.

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 Bus belonging to the 1st respondent and directed the respondents 1 and 2 as owner and insurer of the offending vehicle to jointly and severally pay a sum of Rs.25,23,784/- as compensation to the appellants.

4.Not being satisfied with the quantum of compensation granted by the Tribunal in the said award dated 07.10.2013, made in M.C.O.P. No.2114 of 2011, the appellants have come out with the present appeal.

5.The learned counsel appearing for the appellants contended that the deceased was working as Computer Engineering and Consultant in TATA Consultancy Services Limited and was earning a sum of Rs.30,715/- per month. The appellants examined P.W.3 – Assistant Manager (H.R.) and marked Ex.P11 – Salary Certificate to show that the deceased was earning a sum of Rs.30,714.89/- per month. The Tribunal erroneously fixed only a sum of Rs.28,748/- as monthly income of the deceased and deducted 20% towards Income Tax. The deceased was aged 25 years at the time of accident. The Tribunal failed to grant any amount towards future prospects. The amounts granted by the Tribunal towards loss of love and affection and funeral expenses are meagre. The Tribunal failed to grant any compensation for loss of estate and prayed for enhancement of the compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the salary certificate produced by the appellants includes various allowances and the Tribunal ought to have deducted the allowances while fixing the monthly income of the deceased. The monthly income fixed by the Tribunal is excessive. In view of the same, the appellants are not entitled to any enhancement towards future prospects. The amounts granted by the Tribunal towards loss of love and affection and funeral expenses are just compensation. The appellants have not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

7.Heard the learned counsel appearing for the appellants as well as the 2nd respondent and perused the materials available on record.

8. From the materials on record, it is seen that it is the contention of the appellant that the deceased was working as a Computer Engineer and Consultant and was earning a sum of Rs.30,714.89/- per month. The appellants examined P.W.3 – Assistant Manager (H.R.) and Employer of the deceased and marked salary certificate as Ex.P8. The Tribunal considering the evidence of P.W.3 and salary certificate, deducted leave travel allowances and conveyance and fixed a sum of Rs.28,748/- as monthly income of the deceased. There is no error in the deduction made by the Tribunal. The deceased was aged 24 years at the time of accident. The Tribunal has not granted any enhancement towards future prospects. The appellants are entitled to 40% enhancement towards future prospects. After adding 40% enhancement, the yearly income comes to Rs.4,82,964/- {[Rs.28,748/- + Rs.11,499.2/-(40% of Rs.28,748/-)] x 12}. The Tribunal deducted 20% towards Income Tax. The accident occurred on 08.06.2010. During the financial year 2010-2011, upto Rs.1,60,000/- there is nil tax. Thus, the calculation for arriving annual income is as follows :-

Monthly salary of the deceased	...	Rs.28,748/-
40% enhancement towards future prospects	...	Rs.11,499/-
		Rs.40,247/-
Annual income (40247 x 12)	...	Rs.4,82,964/-

Income Tax Slab for financial year 2010-2011

Upto Rs.1,60,000/-	...	Nil
From Rs.1,60,001/- to Rs.5,00,000/-, 10%		
Taxable Income is (Rs.4,82,964 – Rs.1,60,000/-)	...	Rs.3,22,964/-
10% on Rs.3,22,964/-	...	Rs. 32,296/-
Annual Income after deducting income tax (Rs.4,82,964 – 32,296)	...	Rs..4,50,668/-

The deceased was a bachelor at the time of accident. The Tribunal deducted 50% towards personal expenses and the same is proper. By applying the multiplier '18', the compensation awarded by the Tribunal is modified to Rs.40,56,012/- [Rs.4,50,668/- x 18 x 50%] towards loss of dependency. The Tribunal has awarded a meagre sum of Rs.25,000/- towards loss of love and affection and Rs.10,000/- towards funeral expenses. The appellants are entitled to a sum Rs.40,000/- each towards loss of love and affection and Rs.15,000/- towards funeral expenses. 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 transportation is just and reasonable and hence, the same is 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 dependency	24,83,784/-	40,56,012/-	Enhanced
2.	Loss of love and affection	25,000/-	80,000/-	Enhanced
3.	Funeral expenses	10,000/-	15,000/-	Enhanced
4.	Loss of estate	-	15,000/-	Granted
5.	Transportation	5,000/-	5,000/-	Confirmed
	Total	25,23,784/-	41,71,012/-	Enhanced by Rs.16,47,228/-

10.In the result, the appeal is allowed and the amount awarded by the Tribunal at Rs.25,23,784/- is enhanced to Rs.41,71,012/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The respondents are jointly and severally directed to deposit the enhanced award amount, now determined by this Court, along with interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P. No.2114 of 2011. On such deposit, the appellants are permitted to withdraw their share of the award amount alongwith proportionate interest and costs, as per the ratio of apportionment fixed by the Tribunal, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. The appellants are directed to pay the court fee, if any, on the enhanced amount of Rs.16,47,228/-. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

gsa

To

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

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

+1cc to M/s.M.Malar, Advocate Sr.33500
+1cc to Mr.P.Sankaranarayanan, Advocate Sr.33670

C.M.A.No.3461 of 2013

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