

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.483 OF 2020

1.A.Sarala

2.A.Harihara Sudhan (minor)
(minor rep. by her mother and next friend
1st appellant)

3.R.Meenakshi

.. Appellants/Petitioners

Vs.

1.K.Soundararajan

2.United India Insurance Company Ltd.
No.134, Silingi building
Greens road, Chennai-600 006.

.. Respondents/Respondents

Prayer:

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 12.11.2019 made in M.C.O.P.No.1734 of 2017 on the file of Motor Accident Claims Tribunal, Special Sub Court, Small Causes Court No.I, Chennai.

For Appellants : Mr.A.A.Venkatesan

For R2 : Mr.J.Michael Visuvasam

J U D G M E N T

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 12.11.2019 made in M.C.O.P.No.1734 of 2017 on the file of Motor Accident Claims Tribunal, Special Sub Court, Small Causes Court No.I, Chennai.

2.The appellants are claimants in M.C.O.P.No.1734 of 2017 on the file of Motor Accident Claims Tribunal, Special Sub Court, Small Causes Court No.I, Chennai. They filed the said claim petition claiming a sum of Rs.75,00,000/- as compensation for

the death of one Alagar, who died in the accident that took place on 03.02.2017.

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 car belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said car to pay a sum of Rs.14,94,000/- 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 earning a sum of Rs.750/- per day by working as a mason. The appellants have examined the Managing Director of the company as P.W.3 to prove the avocation and income of the deceased. The Tribunal without considering the same, fixed only a meagre sum of Rs.8,000/- per month as notional income of the deceased. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6.The learned counsel appearing for the 2nd respondent/Insurance Company made his submissions supporting the award passed by the Tribunal 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 the entire materials available on record.

8.It is the contention of the appellants that the deceased was aged 40 years at the time of accident and was earning a sum of Rs.750/- per day by working as a mason. The appellants have examined one V.Suresh Kumar, employer of the deceased as P.W.3 and marked Ex.P16/copies of Certificate of Registration and Form GST to prove the avocation and income of the deceased. The Tribunal rejected the same holding that the appellants have not filed any document such as payment cash voucher and Income Tax Return statement to prove the income of the deceased. In the absence of any material evidence to prove the income of the deceased, the Tribunal fixed a sum of Rs.8,000/- per month as notional income of the deceased. The accident is of the year 2017 and the notional income fixed by the Tribunal is meagre. Hence, a sum of Rs.12,000/- per month is fixed as notional income of the deceased. As per Ex.P8/10th mark sheet and Transfer Certificate, the deceased was aged 39 years at the time of accident. The Tribunal granted 40% enhancement towards future

prospects, applied multiplier '15' and deducted 1/3rd towards personal expenses, which are proper. Thus, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.20,16,000/- (Rs.12,000/- + 4800 [Rs.12,000/- X 40%] X 12 X 15 X 2/3). In addition to that, the Tribunal awarded compensation under different heads, which are just and reasonable and hence, the same are hereby confirmed. 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	13,44,000	20,16,000	Enhanced
2.	Loss of consortium	40,000	40,000	Confirmed
3.	Loss of love and affection	75,000	75,000	Confirmed
4.	Loss of estate	15,000	15,000	Confirmed
5.	Transportation	5,000	5,000	Confirmed
6.	Funeral expenses	15,000	15,000	Confirmed
	Total	14,94,000	21,66,000	Enhanced by Rs.6,72,000/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.14,94,000/- is hereby enhanced to Rs.21,66,000/- 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. 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 if any, already deposited by them, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants 1 & 3/claimants 1 & 3 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 of the minor 2nd appellant/2nd claimant is directed to be deposited in any one of the Nationalised Banks till the minor attains majority. The 1st appellant being mother of the 2nd appellant is permitted to withdraw the accrued interest once in three months for the welfare of the minor. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

kj

To

1. The Special Subordinate Judge No.I
The Motor Accident Claims Tribunal
Small Causes Court, Chennai.
2. The Section Officer
V.R.Section,
High Court, Chennai.

+1cc to Mr.J.Michael Visuvasam, Advocate, S.R.No.15728

C.M.A.No.483 of 2020

LN(CO)
CS/09/03/2021