

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.06.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No. 3715 of 2013

1.Jayalakshmi

2.Sumathi

3.Kavitha

4.Nithya

5.Sankar Narayanan

6.Barani

... Appellants/Claimants

Vs.

1.T.Shanmugavadivel

2.M/s. United India Insurance Company Limited,

No.1090, A.R.Complex

Poonamallee High Road

Chennai.

... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 19.12.2012, made in M.A.C.T.O.P No.4034 of 2009, on the file of the Motor Accident Claims Tribunal, XVII Additional District and Sessions Court, Chennai.

For Appellants: Mr.F.Terry Chellaraja

For R2 : Ms.I.Malar

R1 : Exparte

J U D G M E N T

This appeal has been filed for enhancement of the compensation granted by the award dated 19.12.2012, made in M.C.O.P. No.4034 of 2009, on the file of the Motor Accident Claims Tribunal, XVII Additional District and Sessions Court, Chennai.

2.The appellants are the claimants in M.C.O.P. No.4034 of 2009, on the file of the Motor Accidents Claims Tribunal, XVII Additional District and Sessions Court, Chennai. They filed the above said claim petition, claiming a sum of Rs.18,00,000/- as compensation for the death of one A.Balaraman, who died in the accident that took place on 06.03.2007.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to

rash and negligent riding by the rider of the motorcycle belonging to the 1st respondent and directed the 2nd respondent-Insurance Company as insurer of the motorcycle to pay a sum of Rs.6,19,870/- as compensation to the appellants.

4. Not being satisfied with the amounts awarded by the Tribunal in the award dated 19.12.2012, made in M.C.O.P. No. 4034 of 2009, the appellants have come out with the present appeal seeking enhancement of compensation.

5. Learned counsel appearing for the appellants contended that at the time of accident, the deceased was working as Security Incharge at SRM Institute, Potherri and was earning a sum of Rs.10,000/- per month. To prove the same, they examined the Administrative Officer of SRM Institute as P.W.3 and marked Exs.P11 to P14. But the Tribunal fixed a meagre sum of Rs.4,500/- per month as notional income of the deceased instead of Rs.10,000/- per month. The deceased was aged 63 years at the time of accident. The Tribunal applied multiplier 5 as against the correct multiplier 7. There are six dependants of the deceased and the Tribunal ought to have deducted 1/5th towards personal expenses of the deceased and granted 30% enhancement towards future prospects. The amounts awarded by the Tribunal towards loss of consortium, loss of love and affection, transportation and funeral expenses are meagre. The Tribunal has not awarded any amount towards loss of estate, damages to cloth and mental agony. The total compensation 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 Tribunal after considering the evidence of P.W.3, fixed a sum of Rs.4,500/- per month as notional income of the deceased. The deceased was aged 65 years at the time of accident and hence the appellants are not entitled to any enhancement towards future prospects. The Tribunal rightly adopted multiplier '5' and deducted 1/4th towards personal expenses of the deceased. The total compensation awarded by the Tribunal is not meagre. 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. It is the contention of the appellants that at the time of accident, the deceased was working as Security Incharge at SRM Institute, Potherri and was earning a sum of Rs.10,000/- per month. To prove the same, they examined the Administrative Officer of the SRM Institute as P.W.3 and marked Exs.P11 to P14. The Tribunal considering the evidence of P.W.3, fixed a sum of Rs.4,500/- per month as notional income of the

deceased. The accident is of the year 2007 and the monthly income fixed by the Tribunal is meagre. Considering the year of accident, a sum of Rs.6,500/- per month is fixed as the notional income of the deceased. The appellants claimed that the deceased was aged 63 years at the time of accident. In Exs.P4 to P6/Discharge Summaries, the age of the deceased was mentioned as 65 years. Considering the discharge summaries, the Tribunal fixed the age of the deceased at 65 years and applied multiplier '5' which is not correct.. The correct multiplier applicable is '7'. Considering the age of the deceased, the appellants are not entitled to any enhancement towards future prospects. There are six dependants of the deceased and the Tribunal has rightly deducted 1/4th towards personal expenses of the deceased. Thus, the amount awarded by the Tribunal towards loss of dependency is modified to Rs.4,09,500/- {6,500 x 7 x 12 x $\frac{3}{4}$ }. The amounts awarded by the Tribunal towards loss of consortium to the 1st appellant and funeral expenses are meagre and hence, the same are hereby enhanced to Rs.40,000/- and Rs.15,000/- respectively. The Tribunal has not awarded any amount towards loss of estate. The appellants are entitled to a sum of Rs.15,000/- 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 dependency	2,02,500/-	4,09,500/-	Enhanced
2.	Medical Expenses	2,87,370/-	2,87,370/-	Confirmed
3.	Love and affection	1,00,000/-	1,00,000/-	Confirmed
4.	Loss of consortium to 1 st appellant	10,000/-	40,000/-	Enhanced
5.	Transportation	10,000/-	10,000/-	Confirmed
6.	Funeral expenses	10,000/-	15,000/-	Enhanced
7.	Loss of estate	-	15,000/-	Granted
	Total	6,19,870/-	8,76,870/-	Enhanced by Rs.2,57,000/-

10. In the result, the appeal is allowed and the compensation awarded by the Tribunal at Rs.6,19,870/- is enhanced to Rs.8,76,870/- along with interest and costs. 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, 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.4034 of 2009, on the file of the Motor Accidents Claims Tribunal, XVII Additional District and Sessions Court, Chennai. On such deposit, the appellants are permitted to withdraw their respective share of the enhanced award amount, along with 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 necessary court fee, on the enhanced amount of Rs.2,57,000/- now determined by this Court. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

mayakr

To

1. The XVII Additional District and Sessions Judge,
Motor Accident Claims Tribunal,
Chennai.

Copy To

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

SSI (CO)
GN (05/11/2020)

C.M.A. No. 3715 of 2013