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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.379 of 2013

1.Parvathy

2.Arunkumar

.. Appellants/Petitioners

Vs.

1.K. Abdul Razaak

(R1 remained exparte before the Tribunal.)

2.The Oriental Insurance Co. Ltd.,

Oil Mill Bus Stop, SBI Upstairs,

Jawaharlal Nehru Salai, Tiruvallore.

3.Shalini Devi

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 10.09.2012, made in M.C.O.P. No.417 of 2010, on the file of the Additional District and Sessions Judge - III, (Motor Accident Claims Tribunal), Poonamallee.

For Appellants : Ms. Jayanthi

for M/s. J. Mahalingam

For Respondents: Mr. K. Vinod (For R2)

for M/s. Elveera Ravindran

J U D G M E N T

This matter is heard through "Video Conferencing".

This Civil Miscellaneous Appeal has been filed for enhancement of the compensation granted by the Tribunal in the award dated 10.09.2012, made in M.C.O.P. No.417 of 2010, on the file of the Additional District and Sessions Judge - III, (Motor Accident Claims Tribunal), Poonamallee.



2.The appellants filed M.C.O.P. No.417 of 2010, on the file of the Additional District and Sessions Judge - III, (Motor Accident Claims Tribunal), Poonamallee, claiming a sum of Rs.15,00,000/- as compensation for the death of one Kannan, who died in the accident that took place on 17.09.2008.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that accident occurred due to rash and negligent driving by the driver of the Van belonging to the 1st respondent and directed the 2nd respondent as insurer of the vehicle to pay a sum of Rs.5,60,000/- as compensation to the appellants.

4.Not being satisfied with the amounts granted by the award dated 10.09.2012, made in M.C.O.P. No.417 of 2010, the appellants have come out with the present appeal.

5.The learned counsel appearing for the appellants contended that at the time of accident, the deceased was working as a Cook and Catering Contractor and was earning a sum of Rs.10,000/- to Rs.15,000/- per month and to prove the same, the appellants have examined the co-worker of the deceased as P.W.4. The Tribunal without considering the same, erroneously fixed a meagre sum of Rs.4,500/- per month as notional income. The amounts awarded by the Tribunal towards loss of love and affection, loss of consortium and funeral expenses are meagre. The Tribunal failed to award any amount towards loss of estate, transportation charges and medical expenses and prayed for enhancement of the compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the appellants failed to prove the avocation and income of the deceased. In the absence of any material evidence to prove the avocation and income of the deceased, the Tribunal rightly fixed a sum of Rs.4,500/- as monthly income and granted compensation, which is not meagre. The deceased was aged 45 years at the time of accident. The Tribunal erroneously applied multiplier '15', instead of '14'. The total compensation awarded by the Tribunal under different heads are not meagre. The appellants have not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

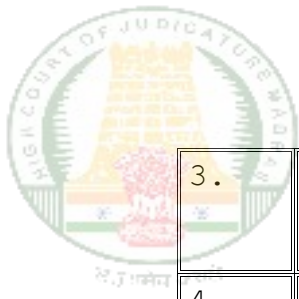
7.Heard the learned counsel appearing for the appellants as well as the 2nd respondent-Insurance Company and perused the materials available on record.

8.From the materials on record, it is seen that it is the contention of the appellants that at the time of accident, the deceased was working as a Cook and Catering Contractor and was



earning a sum of Rs.10,000/- to Rs.15,000/- per month. In the absence of any material evidence, 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 2008. Considering the year of accident and nature of work done by the deceased, a sum of Rs.6,500/- per month is fixed as notional income of the deceased. The appellants contended that the deceased was aged 45 years at the time of accident. The Tribunal considering the death certificate and post mortem certificate, rightly fixed the age of the deceased as 45 years, but erroneously applied the multiplier '15'. As per the judgment of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC Supreme Court [Sarla Verma & others vs. Delhi Transport Corporation & another], the correct multiplier applicable is '14'. The Tribunal failed to grant any enhancement towards future prospects. As per the judgment of the Hon'ble Apex Court reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and others], the appellants are entitled to 25% enhancement towards future prospects. There are three dependants of the deceased. Hence, deducting 1/3rd towards personal expenses of the deceased and applying multiplier '14', the amounts awarded by the Tribunal towards loss of dependency is modified to Rs.9,10,000/- {[Rs.6,500/- + Rs.1,625/- (25% of Rs.6,500/-)] x 12 x 14 x 2/3}. The Tribunal has awarded a meagre sum of Rs.5,000/- towards loss of consortium to the 1st appellant. The 1st appellant being wife of the deceased is entitled to Rs.40,000/- towards loss of consortium. The amounts awarded by the Tribunal towards loss of love and affection and funeral expenses are meagre. The appellants 2 and 3 who are the children of the deceased are entitled to a sum of Rs.25,000/- each towards loss of love and affection and Rs.15,000/- towards funeral expenses. The Tribunal failed to award any amount towards loss of estate. The appellants are entitled to a sum of Rs.15,000/- towards loss of estate. 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	5,40,000/-	9,10,000/-	Enhanced
2.	Loss of consortium to 1 st appellant	5,000/-	40,000/-	Enhanced



3.	Loss of love and affection to appellants 2 & 3	10,000/-	50,000/-	Enhanced
4.	Funeral expenses	5,000/-	15,000/-	Enhanced
5.	Loss of estate	-	15,000/-	Granted
	Total	5,60,000/-	10,30,000/-	Enhanced by Rs.4,70,000/-

9. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.5,60,000/- is enhanced to Rs.10,30,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd respondent-Insurance Company is directed to deposit the 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.417 of 2010. On such deposit, the appellants are permitted to withdraw their share of the award amount, now determined by this Court, 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. No costs.

Sd/-
Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

gsa

To

1. The Additional District and Sessions Judge - III,
(Motor Accident Claims Tribunal),
Poonamallee.

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

+1cc to M/s. J. Mahalingam, Advocate SR.No.42889
+1cc to M/s. Elveera Ravindran, Advocate SR.No.42387

C.M.A.No.379 of 2013

GP (CO)
GMY (01/09/2021)