IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.467 of 2013

1.K. Kavitha

2.K. Ranjith (minor)

3.K. Rekha (minor)

(Minors rep. By their mother & next friend, the 1st appellant)
4.Ellammal .. Appellants

Vs.

1.J. Thirumurugan
(R1 remained exparte before the Tribunal.)

2.HDFC ERGO General Insurance Co. Ltd.,
Raheja Towers, Anna Salai,
Chennai 600 002. .. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 12.09.2012, made in M.C.O.P. No.2281 of 2011, on the file of the XVII Additional Judge, City Civil Court, (Motor Accident Claims Tribunal), Chennai 600 001.

For Appellants : Mr. R. Kalaiarasan
For Respondents: Mr. S. Arun Kumar (For R2)
R1 : Exparte

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 12.09.2012, made in M.C.O.P. No.2281 of 2011, on the file of the XVII Additional Judge, City Civil Court, (Motor Accident Claims Tribunal), Chennai 600 001.

2.The appellants filed M.C.O.P. No.2281 of 2011, on the file of the XVII Additional Judge, City Civil Court, (Motor Accident Claims Tribunal), Chennai 600 001, claiming a sum of Rs.15,00,000/- as compensation for the death of one Karnan, who died in the accident that took place on 20.04.2011.

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 TATA Ace belonging to the 1st respondent and directed the respondents 1 and 2 as owner and insurer of the vehicle to jointly and severally pay a sum of Rs.6,95,200/- as compensation to the appellants.

4.Not being satisfied with the amounts granted by the award dated 12.09.2012, made in M.C.O.P. No.2281 of 2011, 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 aged 43 years, working as a Auto Rickshaw Driver and was earning a sum of Rs.500/- per day and to prove the same, they have marked driving license as Ex.P3. The Tribunal without considering the same, erroneously fixed a meagre sum of Rs.4,500/- per month as notional income. The correct multiplier applicable as per II Schedule of the Motor Vehicles Act is '15', while the Tribunal erroneously applied the multiplier '14'. There are four dependants of the deceased. The Tribunal ought to have deducted 1/4th towards personal expenses of the deceased, instead of 1/3rd. 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 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 43 years at the time of accident. The rightly applied the multiplier '14' and awarded compensation. 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 an Auto Rickshaw Driver and was earning a sum of Rs.500/- per day. In the absence of any material evidence to prove the same, the Tribunal fixed a sum of Rs.4,500/- per month as notional income of the deceased. The accident is of the year 2011. Considering the year of accident, a sum of Rs.7,000/- per month, is fixed as notional income of the deceased. The appellants contended that the deceased was aged 43 years at the time of accident. The Tribunal considering the age of the deceased, rightly applied multiplier '14' and awarded 30% 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 only 25% enhancement towards future prospects. There are four dependants of the deceased. The Tribunal erroneously deducted 1/3rd towards personal expenses instead of 1/4th. Applying multiplier '14' and after deducting 1/4th towards personal expenses of the deceased, the amounts awarded by the Tribunal towards loss of dependency is modified to Rs.11,02,500/- {[Rs.7,000/- + Rs.1,750/- (25% of Rs.7,000/-)] x 12 x 14 x 3/4}. The Tribunal has awarded a meagre sum of Rs.10,000/- towards loss of consortium to the 1st appellant and the same is meagre. The 1st appellant being wife of the deceased is entitled to Rs.40,000/- towards loss of consortium. The Tribunal has awarded a sum of Rs.5,000/- towards funeral expenses, which is also meagre. Hence the same is enhanced to Rs.15,000/-. 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. The amounts granted by the Tribunal under other heads are just and reasonable and hence, the same are 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	6,55,200/-	11,02,500/-	Enhanced
2.	Loss of consortium to 1st appellant	10,000/-	40,000/-	Enhanced
3.	Loss of love and affection to appellants 2 to 4	20,000/-	20,000/-	confirmed
4.	Funeral expenses	5,000/-	15,000/-	Enhanced
5.	Transportation	5,000/-	5,000/-	Confirmed
6.	Loss of estate	-	15,000/-	Granted
	Total	6,95,200/-	11,97,500/-	Enhanced by Rs.5,02,300/-

10.In the result, the appeal is allowed and the amount awarded by the Tribunal at Rs.6,95,200/- is enhanced to Rs.11,97,500/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The respondents 1 and 2 are jointly and severally 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.2281 of 2011. On such deposit, the appellants 1 and 4 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. The shares of the minor appellants 2 and 3 are directed to be deposited in any one of the Nationalized Bank, till the minors attain majority. The 1st appellant, mother of the minor appellants 2 and 3 is permitted to withdraw the accrued interest, once in three months for the welfare of the minor appellants 2 and 3. The appellants are directed to pay the necessary court fee on the enhanced award amount. No costs.

s/d-
Assistant Registrar(CS-V)

True Copy

Sub-Assistant Registrar

To

1.The XVII Additional Judge,
City Civil Court,
(Motor Accident Claims Tribunal),
Chennai 600 001.

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

+1 CC to Mr.N.M. Muthurajan, advocate sr 41999
+1 CC to Mr.S. Arun Kumar, Advocate sr 42013.

C.M.A.No.467 of 2013

SVI(CO)
SP(24/08/2021)