

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.576 of 2013

Nalini .. Appellant/Petitioner
Vs.

1.Krishna Reddy

(R1 remained exparte before Tribunal)

2.The New India Assurance Company Limited,
M.T.P.C. Office,
No.75, Moore Street,
Chennai.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 07.12.2009 made in M.C.O.P.No.406 of 2006 on the file of the Motor Accidents Claims Tribunal, Sub Court, Ponneri.

For Appellant : Ms.A.Subadra
for Ms.M.Malar
For R2 : Mr.J.Chandran

J U D G M E N T

The matter is heard through "Video Conferencing".

2.This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 07.12.2009 made in M.C.O.P.No.406 of 2006 on the file of the Motor Accidents Claims Tribunal, Sub Court, Ponneri.

3.The appellant is the claimant in M.C.O.P.No.406 of 2006 on the file of the Motor Accidents Claims Tribunal, Sub Court, Ponneri. She filed the above said claim petition claiming a sum of Rs.4,00,000/- as compensation for the death of her son viz., Venkatesan, who died in the accident that took place on 09.05.2006.

4.The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred only due to rash and negligent driving by the driver of the car belonging to the 1st respondent and directed the 2nd respondent-Insurance

Company to pay a sum of Rs.2,61,000/- as compensation to the appellant.

5. Not being satisfied with the amounts awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

6. The learned counsel appearing for the appellant contended that the deceased was working as Coolie and was earning a sum of Rs.200/- per day at the time of accident. The Tribunal fixed a meagre sum of Rs.2,000/- per month as notional income of the deceased. The deceased was aged 20 years at the time of accident and the correct multiplier applicable is '18'. The Tribunal erroneously applied multiplier '17'. The Tribunal has not granted any enhancement towards future prospects. The amounts awarded by the Tribunal towards loss of love and affection, funeral expenses, transportation and damages to clothes are meagre. The Tribunal has not awarded any amount towards loss of estate and prayed for enhancement of compensation.

7. Per contra, learned counsel appearing for the 2nd respondent-Insurance Company contended that the appellant has not filed any material evidence before the Tribunal to prove the avocation and income of the deceased. In the absence of any material evidence with regard to avocation and income, a sum of Rs.2,000/- per month fixed by the Tribunal as notional income of the deceased is not meagre. The appellant is not entitled to any enhancement towards future prospects. The multiplier '17' applied by the Tribunal is proper. The amounts awarded by the Tribunal under different heads are not meagre. The appellant has not made out any case for enhancement of compensation and prayed for dismissal of appeal.

8. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 2nd respondent-Insurance Company and perused the entire materials on record.

9. From the materials available on record, it is seen that it is the contention of the appellant that the deceased was working as Coolie and was earning a sum of Rs.200/- per day at the time of accident. Except oral evidence, the appellant has not filed any material evidence to prove the avocation and income of the deceased. In the absence of any material evidence with regard to avocation and income, the Tribunal fixed notional income of the deceased at Rs.2,000/- per month. The accident occurred in the year 2006 and the monthly income fixed by the Tribunal is meagre. Considering the nature of work done by the deceased and year of accident, a sum of Rs.5,000/- per month is fixed as notional income of the deceased. The deceased was aged 20 years

at the time of accident. The Tribunal has not granted any enhancement towards future prospects of the deceased. As per the judgment of the Hon'ble Apex Court reported in 2017 (2) TNMAC 609 (SC), [National Insurance Company Limited Vs. Pranay Sethi and others], the appellant is entitled to 40% enhancement towards future prospects. The Tribunal erroneously applied multiplier '17'. 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 '18'. The deceased was a bachelor at the time of accident and the Tribunal has rightly deducted 50% towards personal expenses of the deceased. Thus, the compensation awarded by the Tribunal towards loss of income is modified to Rs.7,56,000/- {Rs.7,000/- [(Rs.5,000/- + Rs.2,000/- (40% of Rs.5,000/-)] x 12 x 18 x ½}. The amounts awarded by the Tribunal towards loss of love and affection and funeral expenses are meagre and the same are enhanced to Rs.40,000/- and Rs.15,000/- respectively. The amounts awarded by the Tribunal towards transportation and damages to clothes are just and reasonable and hence, the same are confirmed. The Tribunal has not awarded any amount towards loss of estate. The appellant is entitled to a sum of Rs.15,000/- towards loss of estate. The appellant is not entitled to any amount towards loss of dependency. Hence, the compensation awarded by the Tribunal towards loss of dependency is liable to be set aside and it is hereby set aside.

10.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 income	2,04,000/-	7,56,000/-	Enhanced
2.	Loss of love and affection	20,000/-	40,000/-	Enhanced
3.	Transportation	1,000/-	1,000/-	Confirmed
4.	Funeral expenses	5,000/-	15,000/-	Enhanced
5.	Damages to clothes	1,000/-	1,000/-	Confirmed
6.	Loss of dependency	30,000/-	-	Set aside
7.	Loss of estate	-	15,000/-	Granted
	Total	Rs.2,61,000/-	Rs.8,28,000/-	Enhanced by Rs.5,67,000/-

11. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.2,61,000/- is hereby enhanced to Rs.8,28,000/- 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, 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.406 of 2006 on the file of the Motor Accidents Claims Tribunal, Sub Court, Ponneri. On such deposit, the appellant is permitted to withdraw the award amount, now determined by this Court, along with interest and costs, less the amount if any already withdrawn by making necessary applications before the Tribunal. The appellant is directed to pay the necessary Court fee on the enhanced award amount. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1. The Subordinate Judge,
Motor Accidents Claims Tribunal,
Ponneri.
2. The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.J.Chandran, Advocate, SR.NO.42335

AKM/16.04.21/ 4P- 4C/

C.M.A.No.576 of 2013
17.12.2020