

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No. 608 of 2020

1.A.Govindarasu
2.G.Krishnaveni

.. Appellants/Petitioners

Vs.

1.C.Boopathi
2.The United India Insurance Co. Ltd.,
13-A, Nethaji Road, Manjakuppam,
Cuddalore.

.. Respondents/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 05.12.2018, made in M.C.O.P. No. 2303 of 2017, on the file of the Principal Sub Court, (Motor Accident Claims Tribunal), Cuddalore.

For Appellant : Mr.R.Kishore for
Mr.A.N.Viswanatha Rao

For Respondents: Mrs.I.Malar for R2

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the Tribunal in the award dated 05.12.2018 made in M.C.O.P.No.2303 of 2017 on the file of the Motor Accident Claims Tribunal, Principal Sub Court, Cuddalore.

2.By consent of both the parties, the appeal is taken up for final disposal at the admission stage itself.

3.The appellants are the claimants in M.C.O.P.No.2303 of 2017, on the file of the Principal Sub Court, (Motor Accident Claims Tribunal), Cuddalore. They filed the above said claim petition, claiming a sum of Rs.25,00,000/- as compensation for the death of one Naresh, who died in the accident that took place on 28.03.2017

4.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident has occurred due to rash and negligent driving by the driver of the van belonging to the first respondent, insured with the second respondent and directed the respondents 1 and 2 to jointly and severally pay a sum of Rs.11,55,000/- as compensation to the appellants.

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

6.The learned counsel appearing for the appellants contended that the deceased was 15 years old and 10th standard student. The Tribunal erred in fixing a meagre sum of Rs.10,000/- per month as notional income of the deceased. The Tribunal ought to have fixed atleast Rs.12,000/- per month as notional income of the deceased taking into account the date of accident i.e., 28.03.2017. The amount of Rs.2,00,000/- awarded by the Tribunal towards loss of love and affection is meagre. The Tribunal ought to have granted interest at the rate of 9% per annum on the awarded amount. The total compensation awarded by the Tribunal is meagre and prayed for enhancement of compensation.

7.Per contra, the learned counsel appearing for the second respondent-Insurance Company contended that the Tribunal erroneously fixed the monthly income of the 15 years boy as Rs.10,000/- per month and granted 50% enhancement towards future prospects. The Hon'ble Apex Court in the judgment reported in 2013 (5) CTC 212 (SC) [Kishan Gopal and another VS. Lala and others], has fixed the annual income of the minor victim only as Rs.30,000/-. The Tribunal awarded compensation excessively for loss of dependency. The compensation of Rs.2,00,000/- granted towards loss of love and affection is also excessive and prayed for dismissal of the appeal.

8.Heard the learned counsel appearing for the appellants as well as the second respondent and perused the materials available on record.

9.From the materials on record, it is seen that due to the injuries sustained in the accident, 15 years minor son of the appellants died. The deceased was a minor boy aged 15 years a non earning member. As per II Schedule of the Motor Vehicles Act, 1988, the annual income of a non-earning minor aged below 15 years is fixed at Rs.15,000/- per annum. The Hon'ble Apex Court in the judgment reported in 2013 (5) CTC 212 (SC) [Kishan Gopal and another VS. Lala and others], considering the passage of time and the facts of the case, has fixed the annual income

of the minor at Rs.30,000/- and awarded compensation towards loss of income. This Court fixed the annual income of the minor deceased from Rs.45,000/- to Rs.60,000/-, depending upon the facts and circumstances of the case. In the present case, the Tribunal has fixed the monthly income of the deceased minor at Rs.10,000/- and granted 50% enhancement towards future prospects and awarded compensation towards loss of dependency. The Tribunal has fixed excessive amounts as notional income contrary to the Provisions of II Schedule, Judgment of the Hon'ble Apex Court and this Court. In view of the same, the appellants are not entitled for any enhancement towards loss of dependency. The amounts awarded by the Tribunal under other heads are also excessive and the appellants are not entitled for any compensation parental consumption.

10. In the result, the Civil Miscellaneous Appeal is dismissed and the amount awarded by the Tribunal at Rs.11,55,000/- along with interest and costs is confirmed. The respondents 1 and 2 are jointly and severally directed to deposit the compensation awarded by the Tribunal, 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.2303 of 2017. On such deposit, the appellants are permitted to withdraw their share of the award amount, as per the ratio of apportionment fixed by the Tribunal, along with interest and costs, after adjusting the amount, if any, already withdrawn, by filling necessary applications before the Tribunal. No costs.

s/d-

Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

vkr

To

1. The Principal Subordinate Judge
The Principal Sub Court,
(Motor Accident Claims Tribunal),
Cuddalore.

+2 Ccs to Mr.A.N.Viswanatha Rao, Advocate sr 14807.

+1 Cc to M/s.I. Malar, Advocate sr 14831

C.M.A.No.608 of 2020

NRJK(CO)

SP(13/08/2020)