

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.71 of 2013

1.Suseela

2.S. Ravi Chanderan

3.S. Baskar

4.Kaliammal

.. Appellants/Petitioners

Vs.

1.Shespal Shing

2.National Insurance Co. Ltd.,
New Delhi 110 033,
Division Branch Code 360 804.

3.A. Sugirtha

4.The New India Insurance Limited,
No.17, Fort main road,
Shevapet, Salem 636 002.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 30.08.2010, made in M.C.O.P. No.930 of 2008, on the file of the Additional District Judge, Fast Track Court, (Motor Accident Claims Tribunal), Dharmapuri.

For Appellants : Mr. M. Selvam

For Respondents: Mr. J. Chandran (For R2)

No appearance (For R4)

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 30.08.2010, made in M.C.O.P. No.930 of 2008, on the file of the Additional District Judge, Fast Track Court, (Motor Accident Claims Tribunal), Dharmapuri.

2.The appellants filed M.C.O.P. No.930 of 2008, on the file of the Additional District Judge, Fast Track Court, (Motor Accident Claims Tribunal), Dharmapuri, claiming a sum of Rs.25,00,000/- as compensation for the death of one Shanmugam, who died in the accident that took place on 02.03.2008.

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 Lorry 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.4,10,580/- as compensation to the appellants. The Tribunal dismissed the claim petition against the respondents 3 and 4.

4.Not being satisfied with the amounts granted by the award dated 30.08.2010, made in M.C.O.P. No.930 of 2008, 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 doing Hardware Business in the name and style of Sri Shakthi Agencies and was earning a sum of Rs.30,000/- per month and filed Exs.P12 and P13 to prove the same. The Tribunal without considering the evidences on record, fixed only a meagre sum of Rs.3,600/- per month as notional income and granted compensation. The amounts awarded by the Tribunal towards funeral expenses, loss of love and affection, loss of consortium and transportation are meagre and prayed for enhancement of the compensation.

6.The respondents 1 and 3 remained exparte before the Tribunal and hence, notice to the respondents 1 and 3 are dispensed with.

7.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.3,600/- as monthly income and granted compensation. 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.

8. Though notice has been served on the 4th respondent and their name is printed in the cause list, there is no representation for them either in person or through counsel.

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

10. 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 doing Hardware Business in the name and style of Sri Sakthi Agencies and was earning a sum of Rs.30,000/- per month. In the absence of any material evidence to prove the same, the Tribunal fixed a sum of Rs.3,600/- per month as notional income of the deceased. The accident is of the year 2008. Considering the year of accident, a sum of Rs.6,500/- per month, is fixed as notional income of the deceased. The appellants claimed that the deceased was aged 55 years at the time of accident, but they failed to prove the same. The Tribunal considering the post mortem certificate marked as Ex.P2, fixed the age of the deceased as 55 years, as claimed by the appellants and rightly applied multiplier '11'. The Tribunal failed to award any enhancement towards future prospects of the deceased. 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 10% enhancement towards future prospects. There are four dependants of the deceased. The Tribunal erroneously deducted 1/3rd towards personal expenses, as against 1/4th. Applying multiplier '11' 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.7,07,850/- {[Rs.6,500/- + Rs.650/- (10% of Rs.6,500/-)] x 12 x 11 x 3/4}. The Tribunal has awarded a meagre sum of Rs.10,000/- towards loss of consortium to the 1st appellant and Rs.10,000/- towards loss of love and affection to the appellants 2 to 4 and the same are meagre. The 1st appellant being wife of the deceased is entitled to Rs.40,000/- towards loss of consortium and appellants 2 to 4 are entitled to Rs.40,000/- towards loss of love and affection. 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.

11.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	3,16,800/-	7,07,850/-	Enhanced
2.	Loss of consortium to 1 st appellant	10,000/-	40,000/-	Enhanced
3.	Loss of love and affection to appellants 2 to 4	10,000/-	40,000/-	Enhanced
4.	Funeral expenses	5,000/-	15,000/-	Enhanced
5.	Transportation	2,000/-	2,000/-	Confirmed
6.	Medical expenses	66,780/-	66,780/-	Confirmed
7.	Loss of estate	-	15,000/-	Granted
	Total	4,10,580/-	8,86,630/-	Enhanced by Rs.4,76,050/-

12.In the result, the appeal is allowed and the amount awarded by the Tribunal at Rs.4,10,580/- is enhanced to Rs.8,86,630/- 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.930 of 2008. On such deposit, the appellants are permitted to withdraw their share of the award amount, now determined by this Court, along with 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 appeal is dismissed as against the respondents 3 and 4. No costs.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

gsa

To

1.The Additional District Judge,
Fast Track Court,
(Motor Accident Claims Tribunal),
Dharmapuri.

Copy to:
The Section Officer,
V.R Section,
High Court, Madras.

+1cc to Mr.J.Chandran, Advocate, S.R.No.40814

C.M.A.No.71 of 2013

GP(CO)
CB(20/04/2021)