

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.727 OF 2013

1.Mala
2.Udhayakumar
3.Chandra Mohan .. Appellants/Petitioners

Vs.

1. Nagarajan
2. Reliance General Insurance Co. Ltd.,
Unit No.1, 3rd Floor, No.23, Spurtank Road,
Chetpet, Chennai 600 031. .. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 22.08.2012, made in M.C.O.P. No.1577 of 2010, on the file of the XVI Additional District Court, (Motor Accident Claims Tribunal) Chennai.

For Appellants : Mrs.A.Subadra
for M/s.M.Malar
For Respondents: Mr.S.Arunkumar (For R2)

J U D G M E N T

The matter is heard through "Video Conferencing".

This appeal has been filed for enhancement of the compensation granted by the Tribunal in award dated 22.08.2012, made in M.C.O.P. No.1577 of 2010, on the file of the XVI Additional District Court, (Motor Accident Claims Tribunal) Chennai.

2.The appellants filed M.C.O.P.No.1577 of 2010, on the file of the XVI Additional District Court, (Motor Accident Claims Tribunal) Chennai, claiming a sum of Rs.6,00,000/- as compensation for the death of their mother viz., Lakshmi, who died in the accident that took place on 19.01.2010.

3.The Tribunal considering the pleadings, oral and

documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the Car belonging to the 1st respondent and directed the respondents as owner and insurer of the offending vehicle to jointly and severally pay a sum of Rs.90,000/- as compensation to the appellants.

4. Not being satisfied with the amounts awarded by the Tribunal in the award dated 22.08.2012, made in M.C.O.P. No.1577 of 2010, the appellants have come out with the present appeal.

5. The learned counsel appearing for the appellants contended that the Tribunal failed to see that the appellants who are children of the deceased are the legal heirs and legal representatives of the deceased. The Tribunal failed to consider the judgment of the Hon'ble Apex Court in granting compensation for loss of dependency. The appellants proved that they are the legal heirs of the deceased. The deceased was a Vegetable Vendor and was earning a sum of Rs.6,000/- per month. As per the judgment of the Hon'ble Apex Court, the appellants are entitled to 30% enhancement towards future prospects of the deceased. The Tribunal failed to grant any amount towards loss of dependency, funeral expenses, transportation and loss of estate, except granting under the head, loss of love and affection and prayed for enhancement of the compensation.

6. Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the appellants are married children, living separately, they are not dependants of the deceased and hence they are not entitled to any compensation for loss of dependency. The Tribunal considering entire materials on record, rightly did not grant any compensation for loss of dependency. The appellants are not entitled for any enhancement of the compensation and prayed for dismissal of the appeal.

7. Heard 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 the Tribunal granted compensation only for loss of love and affection. The Tribunal did not grant any compensation to the appellants for loss of dependency on the ground that the appellants are aged 40 years, 39 years and 36 years respectively at the time of accident and they are all married, living separately and they are not dependants of the deceased. The said reasoning is erroneous. Even if claimants are major, married and living separately, they are entitled to compensation, as deceased mother would have contributed and supported them from her

earnings. Hence, the appellants are entitled to compensation towards loss of dependency.

9.The appellants have claimed that the deceased was a Vegetable Vendor and was earning a sum of Rs.6,000/- per month. They failed to substantiate the said contention. The accident is of the year 2010. Considering the date of accident, a sum of Rs.6,000/- per month, as claimed by the appellants is fixed as notional income of the deceased. The appellants have failed to prove the age of the deceased. The Tribunal considering the age mentioned in the Post-Mortem Certificate marked as Ex.P3, fixed age of the deceased as 58 years. Considering the age of the deceased, the appellants are entitled to 10% enhancement towards future prospects. 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 as per the age of the deceased at the time of accident is '9'. There are three dependents of the deceased. Hence, applying multiplier '9' and after deducting 1/3rd towards personal expenses of the deceased, the appellants are entitled to a sum of Rs.4,75,200/- {[Rs.6,000/- + Rs.600/- (Rs.6,000/- x 10%)] x 12 x 9 x 2/3} towards loss of dependency. The Tribunal has erroneously awarded excessive sum of Rs.90,000/- towards loss of love and affection. The appellants are entitled to only a sum of Rs.40,000/- towards loss of love and affection. The Tribunal failed to award any amount towards funeral expenses and loss of estate. The appellants are entitled to a sum of Rs.15,000/- each towards loss of estate and funeral expenses. 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	-	4,75,200/-	Granted
2.	Loss of love and affection	90,000/-	40,000/-	Reduced
3.	Loss of estate	-	15,000/-	Granted
4.	Funeral expenses	-	15,000/-	Granted
	Total	90,000/-	5,45,200/-	Enhanced by Rs.4,55,200/-

10.In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.90,000/- is enhanced to

Rs.5,45,200/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The respondents are jointly and severally directed to deposit the award amount, now determined by this Court, along with interest and costs, less the amount 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.1577 of 2010. On such deposit, the appellants are permitted to withdraw their respective shares of the award amount now determined by this Court, as per the ratio of apportionment fixed by the Tribunal, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. No costs.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

gsa

To

1. The XVI Additional District Judge,
(Motor Accident Claims Tribunal),
Chennai.

Copy To

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

+1cc to M/s.M.Malar, Advocate, S.R.No.38898

+1cc to Mr.S.Arunkumar, Advocate, S.R.No.39130

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C.M.A.No.727 of 2013

NMI (CO)

CS/03/05/2021

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