



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.11.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.945 of 2013

1. Syed Ali Fathima

2.A.Ayisha

3.K.Beer Mohammed

4.K.Masthan Kareem

..Appellants/Petitioners

Vs.

1.J.V.Prasad

(R1 remained exparte before the Tribunal
and hence notice to R1 is dispensed with)

2.HDFC ERGO General Insurance Company Ltd.
No.177, Anna salai, Chennai-2.

..Respondents/Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 30.08.2012 made in M.C.O.P.No.20 of 2011 on the file of Motor Accident Claims Tribunal, IV Small Causes Court, Chennai.

For Appellants : Mr.K.Varadha Kamaraj

For R2 : Mr.K.Poomalai

R1 : Exparte

J U D G M E N T

The matter is heard through 'Video-conferencing'.

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 30.08.2012 made in M.C.O.P.No.20 of 2011 on the file of Motor Accident Claims Tribunal, IV Small Causes Court, Chennai.

2.The appellants are claimants in M.C.O.P.No.20 of 2011 on the file of Motor Accident Claims Tribunal, IV Small Causes Court, Chennai. They filed the said claim petition claiming a



sum of Rs.6,00,000/- as compensation for the death of one Khaja Mohideen, who died in the accident that took place on 19.11.2010.

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 trailer lorry belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said trailer lorry to pay a sum of Rs.2,40,000/- as compensation to the appellants.

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

5.The learned counsel appearing for the appellants contended that the deceased was aged 60 years at the time of accident, he was working as a watchman in PHI Logistics and was earning a sum of Rs.7,500/- per month. The appellants have marked the salary certificate of the deceased as Ex.P3 to prove the income of the deceased. The Tribunal without considering the same, fixed only a meagre sum of Rs.4,500/- per month as notional income of the deceased. The Tribunal ought to have applied multiplier '8' instead of '5'. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6.The learned counsel appearing for the 2nd respondent/Insurance Company contended that the appellants failed to examine the author of Ex.P3/salary certificate and the Tribunal considering the same, fixed the monthly income of the deceased as Rs.4,500/-, which is not meagre. The total compensation awarded by the Tribunal under different heads are not meagre. The appellants have not made out any case for enhancement of 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 entire materials available on record.

8.It is the contention of the appellants that the deceased was working as a watchman in PHI Logistics and was earning a sum of Rs.7,500/- per month. The appellants have marked the salary certificate of the deceased as Ex.P3 to prove the income of the deceased. The Tribunal held that the appellants have not examined the author of Ex.P3/salary certificate and fixed a sum of Rs.4,500/- per month as notional income of the deceased. The accident is of the year 2010 and the notional income fixed by the Tribunal is meagre. Hence, a sum of Rs.6,500/- per month is

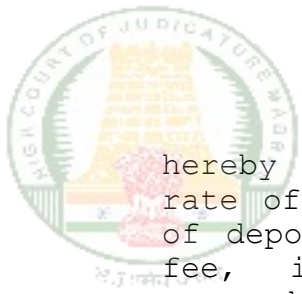


fixed as notional income of the deceased. As per Ex.P4/Post-mortem certificate, the deceased was aged 60 years at the time of accident. The Tribunal applied multiplier '5', which is not correct. As per the judgment of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC Supreme Court (Sarla Verma vs. Delhi Transport Corporation), the correct multiplier applicable is 9. There are four dependents of the deceased. The Tribunal erred in deducting $1/3^{\text{rd}}$ instead of $1/4^{\text{th}}$ towards personal expenses of the deceased. Thus, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.5,26,500/- (Rs.6,500/- X 12 X 9 X $3/4$). The Tribunal has awarded Rs.10,000/- each towards loss of consortium to the 1st appellant and funeral expenses, which are meagre and hence, the same are hereby enhanced to Rs.40,000/- and Rs.15,000/- respectively. The Tribunal has not awarded any compensation towards loss of estate and hence, a sum of Rs.15,000/- is awarded towards loss of estate. A sum of Rs.40,000/- awarded by the Tribunal towards loss of love and affection is just and reasonable and hence, the same is hereby 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 or reduced
1.	Loss of dependency	1,80,000	5,26,500	Enhanced
2.	Loss of consortium	10,000	40,000	Enhanced
3.	Loss of love and affection	40,000	40,000	Confirmed
4.	Funeral expenses	10,000	15,000	Enhanced
5.	Loss of estate	-	15,000	Granted
	Total	2,40,000	6,36,500	Enhanced by Rs.3,96,500/-

10.In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.2,40,000/- is



hereby enhanced to Rs.6,36,500/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellants are directed to pay necessary Court fee, if any, on the enhanced compensation. The 2nd respondent/Insurance Company is directed to deposit the enhanced award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants are permitted to withdraw their respective share of the award amount as per the apportionment fixed by the Tribunal along with proportionate interest and costs, less the amount if any, already withdrawn. No costs.

s/d-
Assistant Registrar (CS V)

True Copy

Sub-Assistant Registrar

kj
To

1.The IV Judge
(Motor Accident Claims Tribunal
Small Causes Court, Chennai.

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

+1 CC to Mr.K. Varadha Kamaraj, Advocate sr 36841
+1 Cc to Mr.K. Poomalai, Advocate sr 36648.

C.M.A.No.945 of 2013

NMI (CO)
SP(31/08/2021)