

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1229 of 2018

1.Devalla Yedukondalu
2.Bathula Uma
3.Devalla siva
4.Devalla Vijay
5.Malakondaiah
6.Lakshmiyamma ...Appellants/Petitioners

Vs.

1.S.Karthikeyan
(R1 remained exparte before Tribunal)
2.HDFC ERGO General Insurance Co. Ltd.,
New.No.528, Old No.559, 2nd floor,
Anna Salai, Teynampet
Chennai-600 018.

... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 15.02.2018 made in M.C.O.P.No.2756 of 2016 on the file of Motor Accident Claims Tribunal, II Small Causes Court, Chennai.

For Appellants : Mr.N.M. Elumalai

For R2 : Ms.C.Harini

for M/s.M.B.Gopalan Associates

J U D G M E N T

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal, in the award dated 15.02.2018 made in M.C.O.P.No.2756 of 2016 on the file of Motor Accident Claims Tribunal, II Small Causes Court, Chennai.

2.The appellants are the claimants in M.C.O.P.No.2756 of 2016 on the file of Motor Accident Claims Tribunal, II Small Causes Court, Chennai. They filed the said claim petition claiming a sum of Rs.50,00,000/- as compensation for the death of one Devalla Sambaiah, who, died in the accident that occurred on 06.03.2016.

3.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 lorry belonging to the first respondent and directed the second respondent-Insurance Company, being the insurer of the lorry to pay a sum of Rs.10,79,000/- as compensation to the appellants 1 to 4 at the first instance and then recover the same from the first respondent-owner of the Lorry. The claim petition was rejected as against the appellants 5 and 6.

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 50 years and was working as Mason Contractor and was earning a sum of Rs.24,000/- per month at the time of accident. The Tribunal failed to consider the evidence of P.W.1 and fixed only a meagre sum of Rs.7,000/- per month as notional income of the deceased. The Tribunal has not awarded any amount towards loss of love and affection and loss of estate. The Tribunal erred in not awarding any compensation to the appellants 5 & 6 who are the parents of the deceased. The amounts awarded by the Tribunal under different heads are meagre and he prayed for enhancement of the compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the appellants have not produced 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, a sum of Rs.7,000/- per

month fixed by the Tribunal as notional income of the deceased is not meagre. The appellants are not entitled to any amounts towards loss of love and affection and loss of estate. The Tribunal after considering all the materials available on record in proper perspective, has awarded just compensation and prayed for dismissal of the appeal.

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

8. It is the contention of the appellants that the deceased was aged 50 years at the time of accident and was earning a sum of Rs.24,000/- per month by working as Mason contractor. But, they failed to prove the said contention. In the absence of any material evidence with regard to avocation and income of the deceased, the Tribunal fixed a sum of Rs.7,000/- per month as notional income of the deceased. The accident is of the year 2016 and the monthly income fixed by the Tribunal is meagre. Considering the age of the deceased and year of accident, a sum of Rs.12,000/- per month is fixed as notional income of the deceased. The deceased was aged 50 years at the time of accident and the Tribunal rightly granted 25% enhancement towards future prospects, adopted multiplier '13' and deducted 1/4th towards personal expenses. In view of the same, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.17,55,000/- {Rs.15,000/- [(Rs.12,000/- + Rs.3,000/- (25% of Rs.12,000/-)] x 12 x 13 x $\frac{3}{4}$ } . The Tribunal has not awarded any amount towards the loss of love and affection. The appellants 2 to 4 being the children of deceased are entitled to a sum of Rs.30,000/- each towards loss of love and affection and the appellants 5 and 6, being the parents of the deceased are entitled to a sum of Rs.20,000/- each towards loss of love and affection. The Tribunal has not awarded any amount towards loss of estate. Hence, a sum of Rs.15,000/- is awarded towards loss of estate. The amounts awarded by the Tribunal towards loss of consortium and funeral expenses are just and reasonable and hence, the same are 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	10,23,672/-	17,55,000/-	Enhanced
2.	Loss of consortium	40,000/-	40,000/-	Confirmed
3.	Funeral expenses	15,000/-	15,000/-	Confirmed
4.	Loss of love and affection to appellants 2 to 4	-	90,000/-	Granted
5.	Loss of love and affection to appellants 5 & 6	-	40,000/-	Granted
6.	Loss of estate	-	15,000/-	Granted
	Total	Rs.10,78,672 /- rounded off to Rs.10,79,000 /-	Rs.19,55,000 /-	Enhanced by Rs.8,76,000/-

10. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.10,79,000/- is hereby enhanced to Rs.19,55,000/- 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 the necessary Court fee if any, on the enhanced compensation. Out of the enhanced award amount i.e., Rs.19,55,000/-, the first appellant being the wife of the deceased is entitled to a sum of Rs.6,65,000/-, the appellants 2 to 4, who are the daughter and sons of the deceased are entitled to a sum of Rs.3,50,000/- each and the appellants 5 and 6, who are parents of the deceased are entitled to a sum of Rs.1,20,000/- each as 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 to the credit of M.C.O.P.No.2756 of 2016 on the file of Motor Accident

Claims Tribunal, II Small Causes Court, Chennai, at the first instance and then recover the same from the 1st respondent. On such deposit, the appellants are permitted to withdraw their respective share of the enhanced award amount now determined by this Court along with proportionate interest and costs, less the amount if any, already withdrawn by filing necessary applications before the Tribunal. No Costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

vsn

To

1.The Motor Accident Claims Tribunal,
II Judge, Court of Small Causes
Chennai.

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

+1 cc to M/s.M.B.Gopalan Associates srl3742

+1 cc to M/s.N.M.Elumalai Advocate srl3478

C.M.A.No.1229 of 2018

sal (co)

aa18/08/2020

WEB COPY