

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.4651 of 2019

1.Rani
2.Periyakkal
3.Pushparaj

... Appellants/Petitioners

Vs.

1.Venkata Ramana
2.Shriram General Insurance Company Limited,
No.10003-E-RIICO Industrial Area,
Sitapuram, Jaipur, Rajasthan. ... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 30.11.2012 made in M.C.O.P.No.307 of 2011 on the file of the Motor Accident Claims Tribunal, Principal District Court, Namakkal.

For Appellants : Mr.A.SathishKumar
for Mr.C.Thangaraju

For R2 : Ms.C.Harini
for Mr.N.Vijayaraghavan

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 30.11.2012 made in M.C.O.P.No.307 of 2011 on the file of the Motor Accident Claims Tribunal, Principal District Court, Namakkal.

2.The appellants are the claimants in M.C.O.P.No.307 of 2011 on the file of the Motor Accident Claims Tribunal, Principal District Court, Namakkal. They filed the above said claim petition, claiming a sum of Rs.15,00,000/- as compensation for the death of one Mohanraj, who died in the accident that took place on 24.04.2010.

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 lorry belonging

to the 1st respondent and directed the respondents 1 and 2, being the owner and insurer of the lorry to pay a sum of Rs.9,24,000/- 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.

5. The learned counsel appearing for the appellants contended that the deceased was working as Heavy Vehicle Driver and was earning a sum of Rs.20,000/- per month. The Tribunal fixed meagre sum of Rs.6,000/- per month as notional income of the deceased and awarded a sum of Rs.8,64,000/- towards loss of income. The deceased was aged 25 years at the time of accident and the Tribunal has not granted any enhancement towards future prospects. The amounts awarded by the Tribunal towards loss of consortium, loss of love and affection and transportation and funeral expenses are meagre. The Tribunal has not granted any amount towards loss of estate and prayed for enhancement of compensation.

6. Per contra, the learned counsel appearing for the second respondent-Insurance Company contended that the appellants have not produced any material evidence to prove that the deceased was earning a sum of Rs.20,000/- per month. In the absence of any material evidence to prove the avocation and income of the deceased, a sum of Rs.6,000/- per month fixed by the Tribunal as notional income of the deceased is not meagre. As per Ex.P3/postmortem certificate, the age of the deceased was 26 years and the correct multiplier applicable is '17', whereas the Tribunal fixed multiplier '18', which is not proper. The appellants are not entitled to any enhancement towards future prospects and the amounts 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 for the appellants as well as the learned counsel appearing for the second respondent and perused the entire materials on record.

8. It is the contention of the appellants that the deceased was working as Heavy Vehicle Driver and was earning a sum of Rs.20,000/- per month. 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.6,000/- per month as notional income of the deceased. The accident occurred in the year 2010 and the notional income fixed by the Tribunal is meagre. Therefore, a sum of Rs.9,000/- per month is fixed as notional income of the deceased.

9. The Tribunal fixed the age of the deceased as 26 years as per Ex.P3/postmortem certificate. The Tribunal has not granted any enhancement towards future prospects. The appellants are entitled to 40% enhancement towards future prospects of the deceased. The correct multiplier applicable is '17' but, the Tribunal erroneously applied multiplier '18'. The Tribunal rightly deducted 1/3rd towards personal expenses of the deceased. In view of the above, the compensation awarded by the Tribunal towards loss of income is modified to Rs.17,13,600/- {Rs.13,600/- [Rs.9,000/- + Rs.3,600/- (40% of Rs.9,000/-) X 12 X 17 X 2/3]}. The Tribunal has awarded meagre amounts of Rs.20,000/- and Rs.10,000/- towards loss of consortium and funeral expenses and the same are enhanced to Rs.40,000/- and Rs.15,000/- respectively. The Tribunal has awarded meagre sum of Rs.30,000/- towards loss of love and affection to the appellants and the same is modified as the appellants 2 and 3 are entitled to a sum of Rs.25,000/- each towards loss of love and affection. The Tribunal has not awarded any amount towards loss of estate. Therefore, a sum of Rs.15,000/- is awarded towards loss of estate. It is well settled that the Tribunal and the Courts have to award just compensation. Though the claimant has claimed lesser compensation, the Courts have power to grant just compensation more than the amount claimed by the claimant. 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 income	8,64,000/-	17,13,600/-	Enhanced
2.	Loss of consortium	20,000/-	40,000/-	Enhanced
3.	Funeral expenses	10,000/-	15,000/-	Enhanced
4.	Loss of love and affection	30,000/-	50,000/-	Enhanced
5.	Loss of estate	-	15,000/-	Granted
	Total	Rs.9,24,000/-	Rs.18,33,600/-	enhanced by Rs.9,09,600/-

10. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.9,24,000/- is hereby enhanced to Rs.18,33,600/- 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 as per the order of this Court dated 26.08.2019 made in C.M.P.No.17101 of 2019 in C.M.A.SR.No.45675 of 2019. The respondents 1 and 2 are jointly and severally directed to

deposit the enhanced award amount now determined by this Court, along with proportionate 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.307 of 2011 on the file of the Motor Accident Claims Tribunal, Principal District Court, Namakkal. On such deposit, the appellants are permitted to withdraw their respective share of the enhanced award amount now determined by this Court, as per the ratio of apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. It is made clear that the appellants are not entitled for any interest for Rs.9,09,600/- the amount now enhanced by this Court, as per the order of this Court dated 22.11.2019 made in C.M.P.No.19977 of 2019 in C.M.A.(SR).No.45675 of 2019. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Principal District Judge,
Motor Accident Claims Tribunal,
Namakkal.

2.The Section Officer,
VR Section,
High Court,
Madras.

+2cc to Mr.C.Thangaraju, Advocate Sr.4409

+1cc to Mr.K.Poomalai, Advocate Sr.4500

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