

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3121 of 2019

1.M.Poovendan

2.M.Nanthini

..Appellants/Claimants

Vs.

1.M.Kaveri

2.Iffco TokioGeneral Insurance Company Limited,
Customer Service Centre,
ITGI Strategic Business Unit,
28, 2nd Floor, North Usman Road,
T.Nagar, Chennai - 600 017.

3.S.Jeyanthi

4.Royal Sundaram Alliance Insurance Company Limited,
TVS Co-operative Stores Buildings,
37, Krishna Rao Tank Street,
Madurai - 625 001.

..Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 17.11.2017 made in M.C.O.P.No.1732 of 2012 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai.

For Appellants : Mr.V.Balamurugan
For R2 : Mr.S.Arunkumar
For R4 : No appearance
R1 & R3 : Set Exparte

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 17.11.2017 made in M.C.O.P.No.1732 of 2012 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai.

2.The appellants are the claimants in M.C.O.P.No.1732 of 2012 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai. They filed the above said claim petition, claiming a sum of Rs.20,00,000/- as compensation for the death of their father, viz., Murugan, who died in the accident that took place on 08.07.2010.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by driver of the car belonging to the 1st respondent and directed the 2nd respondent, being the insurer of the car to pay a sum of Rs.8,55,000/- 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 at the time of accident, the deceased was aged 43 years and was self employed as Income Tax and Sales Tax Consultant / Accountant for Timber Shops and Provisional Stores and was earning a sum of Rs.25,000/- per month. But, the Tribunal fixed a meagre sum of Rs.6,000/- per month as notional income of the deceased. The Tribunal has not awarded any amount towards loss of estate, loss of love and affection and transportation. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent 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.6,000/- per month fixed by the Tribunal as notional income of the deceased is not meagre. 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 appearing for the appellants as well as the learned counsel appearing for the 2nd respondent and perused entire materials on record.

8.It is the contention of the appellants that at the time of accident, the deceased was aged 43 years and was self employed as Income Tax and Sales Tax Consultant / Accountant for Timber Shops and Provisional Stores and was earning a sum of

Rs.25,000/- per month. They failed to substantiate the avocation and income. 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 monthly income fixed by the Tribunal is meagre. Therefore, a sum of Rs.10,000/- per month is fixed as notional income of the deceased. The appellants contended that deceased was aged 43 years at the time of accident, but as per Ex.P22/copy of PAN Card, the deceased was aged 44 years at the time of accident. The Tribunal fixed the age of the deceased as 44 years based on Ex.P22/copy of PAN Card of the deceased and rightly granted 25% enhancement towards future prospects of the deceased. The Tribunal adopted multiplier '14' and deducted 1/3rd towards personal expenses of the deceased. In view of the above, compensation awarded by the Tribunal towards loss of dependency is modified to Rs.14,00,000/- {Rs.12,500/- [Rs.10,000/- + Rs.2,500/- (25% of Rs.10,000/-)] X 12 X 14 X 2/3}. The Tribunal has not awarded any amount towards loss of love and affection, loss of estate and transportation. Therefore, the appellants are entitled to a sum of Rs.40,000/- each towards loss of love and affection, Rs.15,000/- towards loss of estate and Rs.10,000/- towards transportation. The amount awarded by the Tribunal towards funeral expenses is just and reasonable and hence, the same is confirmed. 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	8,40,000/-	14,00,000/-	Enhanced
2.	Funeral expenses	15,000/-	15,000/-	Confirmed
3.	Loss of love and affection	-	80,000/-	Granted
4.	Loss of estate	-	15,000/-	Granted
5.	Transportation	-	15,000/-	Granted
	Total	Rs.8,55,000/-	Rs.15,20,000/-	enhanced by Rs.6,65,000/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.8,55,000/- is hereby enhanced to Rs.15,20,000/- together with interest at the rate of 9% 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 amount of compensation now determined by this Court. The 2nd respondent 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.1732 of 2012 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai. 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 interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. No costs.

s/d-

Assistant Registrar(CS-VIII)

True Copy

Sub-Assistant Registrar

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To

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

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

C.M.A.No.3121 of 2019

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