

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2270 of 2014

1.Sundari
2.Seenuvasan
3.Sivaranjini

.. Appellants/Petitioners

Vs.

1.Merlinjebbaraj
2.The Manager,
Bajaj Allianz General Insurance Company Limited,
Anna Nagar,
Chennai - 600 040.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 01.04.2014 made in M.A.C.T.O.P.No.109 of 2013 on the file of the Motor Accidents Claims Tribunal, Special District Court (to deal with M.C.O.P cases), Villupuram.

For Appellants : Mr.T.Dhanyakumar
For R1 : No appearance
For R2 : Mr.N.Somasundar

J U D G M E N T

The matter is heard through "Video Conferencing".

2.This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 01.04.2014 made in M.C.O.P.No.109 of 2013 on the file of the Motor Accidents Claims Tribunal, Special District Court (to deal with M.C.O.P cases), Villupuram.

3.The appellants are the claimants in M.C.O.P.No.109 of 2013 on the file of the Motor Accidents Claims Tribunal, Special District Court (to deal with M.C.O.P cases), Villupuram. They filed the above said claim petition claiming a sum of Rs.15,00,000/- as compensation for the death of one Sekar, who died in the accident that took place on 30.03.2011.

4.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 car belonging to

the 1st respondent and directed the respondents to jointly and severally pay a sum of Rs.6,07,000/- as compensation to the appellants.

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

6. The learned counsel appearing for the appellants contended that the deceased was working as Heavy Vehicle Container Lorry Driver and was earning a sum of Rs.20,000/- per month at the time of accident. To prove the said contention, the appellants examined one Egambaram as P.W.3 and marked the driving license of the deceased as Ex.P7. The Tribunal did not accept the evidence of P.W.3 and fixed a meagre sum of Rs.5,500/- per month as notional income of the deceased. The deceased was aged 47 years at the time of accident. The Tribunal has not granted any enhancement towards future prospects. The amounts awarded by the Tribunal towards loss of consortium to the 1st appellant, loss of love and affection and funeral expenses are meagre. The Tribunal has not awarded any amount towards loss of estate and prayed for enhancement of compensation.

7. Though notice has been served on the 1st respondent and his name is printed in the cause list, there is no representation either in person or through counsel.

8. Per contra, learned counsel appearing for the 2nd respondent-Insurance Company contended that P.W.3 is not the employer of the deceased and the appellants have not filed any document to prove the income of the deceased except marking the driving license of the deceased as Ex.P7. In the absence of any material evidence with regard to avocation and income, a sum of Rs.5,500/- per month fixed by the Tribunal as notional income of the deceased is not meagre. The monthly income fixed by the Tribunal at Rs.5,500/- is highly excessive and hence, the appellants are not entitled to any enhancement towards future prospects. The amounts awarded by the Tribunal towards loss of consortium to 1st appellant, loss of love and affection and funeral expenses are not meagre. The appellants have not made out any case for enhancement of compensation and prayed for dismissal of appeal.

9. Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the 2nd respondent-Insurance Company and perused the entire materials on record.

10. From the materials available on record, it is seen that it is the contention of the appellants that the deceased was working as Heavy Vehicle Container Lorry Driver and was earning

a sum of Rs.20,000/- per month at the time of accident. To prove the said contention, the appellants examined one Egambaram as P.W.3 and marked the driving license of the deceased as Ex.P7. P.W.3 examined by the appellants deposed that the deceased was working as a Driver in the container lorry bearing Registration No.TN 04 L 5518 but he has not produced the Registration Certificate for the said vehicle. P.W.3 also has not produced any document to show that deceased was paid a sum of Rs.15,000/- per month as salary. The Tribunal after considering Ex.P7/driving license of the deceased, held that the driving license was not renewed in the year 2010 and there was no evidence to show that the deceased had license to drive heavy transport vehicle at the time of accident. The Tribunal considering the evidence of P.W.3 and Ex.P7/driving license, fixed notional income of the deceased at Rs.5,500/- per month. The accident occurred in the year 2011 and the monthly income fixed by the Tribunal is meagre. Considering the nature of work done by the deceased and year of accident, a sum of Rs.7,500/- per month is fixed as notional income of the deceased. The deceased was 47 years at the time of accident. The Tribunal has not granted any enhancement towards future prospects of the deceased. As per the judgment of the Hon'ble Apex Court reported in 2017 (2) TNMAC 609 (SC), [National Insurance Company Limited Vs. Pranay Sethi and others], the appellants are entitled to 25% enhancement towards future prospects. The multiplier '13' applied and 1/3rd deduction made by the Tribunal are proper. Thus, the amount awarded by the Tribunal towards loss of dependency is modified to Rs.9,75,000/- {Rs.9,375/- [(Rs.7,500/- + Rs.1,875/- (25% of Rs.7,500/-)) x 12 x 13 x 2/3]}. The amounts awarded by the Tribunal towards loss of consortium to 1st appellant and funeral expenses are meagre and the same are enhanced to Rs.40,000/- and Rs.15,000/- respectively. The Tribunal has awarded a meagre sum of Rs.10,000/- each to appellants 2 and 3 towards loss of love and affection and the same is enhanced to Rs.25,000/- each. The Tribunal has not awarded any amount towards loss of estate. The appellants are entitled to a sum of Rs.15,000/- towards loss of estate. 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	5,72,000/-	9,75,000/-	Enhanced
2.	Loss of love and affection to appellants 2 and 3	20,000/-	50,000/-	Enhanced

3.	Loss of consortium to 1 st appellant	10,000/-	40,000/-	Enhanced
4.	Funeral expenses	5,000/-	15,000/-	Enhanced
5.	Loss of estate	-	15,000/-	Granted
	Total	Rs.6,07,000/-	Rs.10,95,000/-	Enhanced by Rs.4,88,000/-

11. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.6,07,000/- is hereby enhanced to Rs.10,95,000/- 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 if any 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.109 of 2013 on the file of the Motor Accidents Claims Tribunal, Special District Court (to deal with M.C.O.P cases), Villupuram. On such deposit, the appellants are permitted to withdraw the respective share of the 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. No costs.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Special District Judge (to deal with M.C.O.P cases),
Motor Accidents Claims Tribunal,
Villupuram.

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

+1cc to Mr.T.Dhanyakumar, Advocate, S.R.No.42139

+1cc to Mr.N.Somasundaar, Advocate, S.R.No. 41657

C.M.A.No.2270 of 2014

SR(CO)

GN(17/04/2021)