

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2308 of 2014

1.Gangadevi

2.Rajesh

3.Minor Sudha

4.Minor Ramadoss

5.Renugambal

(Minor respondents 3 and 4 are represented by the next friend mother Gangadevi, 1st appellant herein) ... Appellants

Vs.

1.M/s.Tirupur Karur Transports,
Situating at No.3/9,
Thennampalayam Extension,
Thirupur - 641 604.

2.The Divisional Manager,
National Insurance Company Limited,
No.19, Officers line,
Vellore. ... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 18.01.2012 in M.C.O.P.No.351 of 2010 on the file of the Motor Accident Claims Tribunal, District Court, Thiruvannamalai.

For Appellants : Mr.F.Terry Chella Raja
for Ms.M.Malar

For R2 : Mr.J.Chandran
R1 : Exparte

J U D G M E N T

The Civil Miscellaneous Appeal has been filed by the appellants seeking enhancement of compensation granted by the Tribunal in the award dated 18.01.2012 in M.C.O.P.No.351 of 2010 on the file of the Motor Accident Claims Tribunal, District Court, Thiruvannamalai.

2.The appellants are claimants before the Tribunal in

M.C.O.P.No.351 of 2010 on the file of the Motor Accident Claims Tribunal, District Court, Thiruvannamalai. They filed the said claim petition claiming a sum of Rs.30,00,000/- as compensation for the death of one Ganesan, who died in the accident that took place on 31.01.2010.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to the rash and negligent driving by the driver of the bus, belonging to the first respondent and directed the 1st respondent/owner of the vehicle as well as the 2nd respondent/Insurance Company to pay a sum of Rs.7,86,000/- 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 working as a Machine Operator in Sathiyam Agro Foods, Thirupur and was earning a sum of Rs.7,250/- per month. To prove the avocation and income of the deceased, the appellants examined one V.N.Shanmugam/Manager of Sathiyam Agro Foods, Thirupur as P.W.3 and marked Ex.P7/salary certificate. The Tribunal without considering the evidence of P.W.3 and Ex.P7-salary certificate, fixed a sum of Rs.6,000/- per month as notional income of the deceased and granted meagre sum of Rs.7,20,000/- towards loss of dependency. The deceased was aged 42 years at the time of accident and the Tribunal has not granted any enhancement towards future prospects of the deceased. There are five dependants of the deceased and the Tribunal ought to have deducted 1/4th towards personal expenses of the deceased instead of deducting 1/3rd. The Tribunal has not awarded any amount towards loss of estate. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6.Per contra, Mr.J.Chandran, learned counsel appearing for the second respondent-Insurance Company contended that the appellants have not proved the avocation and income of the deceased. In the absence of material evidence a sum of Rs.6,000/- per month fixed by the Tribunal as notional income of the deceased is not meagre. The deceased was aged 42 years. The proper multiplier applicable is '14' and the Tribunal erroneously adopted multiplier '15' for awarding compensation towards loss of dependency. Therefore, the appellants are not entitled to any enhancement towards future prospects. The Tribunal has rightly deducted 1/3rd towards personal expenses of the deceased. 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 second respondent and perused the materials available on record.

8. It is the contention of the appellants that the deceased was aged 42 years at the time of accident and was working as a Machine Operator in Sathiyam Agro Foods, Thirupur and was earning a sum of Rs.7,250/- per month. To substantiate the same, the appellants examined one V.N. Shanmugam/Manager of Sathiyam Agro Foods, Thirupur as P.W.3 and produced Ex.P7-salary certificate. However, the Tribunal fixed a sum of Rs.6,000/- per month as notional income of the deceased despite taking note of the fact that there was no contra evidence regarding the monthly income of the deceased. The accident is of the year 2010 and the monthly income fixed by the Tribunal is meagre. Therefore, considering the year of accident, deposition of P.W.3 and Ex.P7/salary certificate, a sum of Rs.7,250/- per month is fixed as notional income of the deceased. The deceased was aged 42 years at the time of accident and the Tribunal has not granted any enhancement towards future prospects. The appellants are entitled to 25% enhancement towards 'future prospects'. The correct multiplier applicable is '14' and the Tribunal erroneously applied multiplier '15'. There are five dependents of the deceased and the Tribunal ought to have deducted 1/4th instead of deducting 1/3rd towards personal expenses of the deceased. In view of the same, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.11,41,812/- (Rs.7,250/- + Rs.1,812/- (25% of Rs.7,250/-) X 12 X 14 X 3/4). The amounts awarded by the Tribunal towards loss of consortium to the 1st appellant and loss of love and affection to the appellants 2 to 5 are meagre and the same are enhanced to Rs.40,000/- and Rs.80,000/- respectively. The Tribunal has not awarded any amount towards funeral expenses and loss of estate. Therefore, a sum of Rs.15,000/- each is awarded towards funeral expenses and loss of estate respectively. The amounts awarded by the Tribunal towards transportation and damage of clothes and articles are just and reasonable and hence, the same are confirmed by this Court.

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
1.	Loss of earnings	7,20,000	11,41,812	enhanced
2.	Loss of consortium to the 1 st appellant	15,000	40,000	enhanced
3.	Loss of love and affection to the appellants 2 to 5	40,000	80,000	enhanced
4.	Transportation	10,000	10,000	confirmed
5.	Damage of clothes and articles	1,000	1,000	confirmed
6.	Funeral expenses	-	15,000	granted
7.	Loss of estate	-	15,000	granted
	Total	Rs.7,86,000/-	Rs.13,02,812/-	Enhanced by Rs.5,16,812/-

10. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.7,86,000/- is hereby enhanced to Rs.13,02,812/- 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 on the enhanced amount of compensation. Both the 1st respondent/owner of the bus as well as the 2nd respondent/Insurance Company are 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.351 of 2010 on the file of the Motor Accident Claims Tribunal, District Court, Thiruvannamalai. On such deposit, the appellants 1, 2 and 5 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. The share of

the minor appellants 3 and 4 are directed to be deposited in any one of the Nationalized Banks, till the minor appellants 3 and 4 attains majority. On such deposit, the first appellant, being the mother of the minor appellants 3 and 4 is permitted to withdraw the accrued interest once in three months for the welfare of the minor appellants 3 and 4. No costs.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

gbi

To

1.The District Judge,
Motor Accident Claims Tribunal,
Thiruvannamalai.

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

+1cc to Mr.M.Malar, Advocate, S.R.No. 22276

+1cc to Mr.J.Chandran, Advocate, S.R.No. 22071

C.M.A.No.2308 of 2014

SPD (CO)
GN (22/04/2021)



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