IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2395 of 2014

1.T.D.Ragitha
K.Jagadeesan (since deceased)

2.J.Sundari
3.S.Siddhesh (minor)
(Represented by his mother and
next friend 1st appellant) ... Appellants/Claimants

Vs.

1.R.Ravi
(R1 remained exparte before the Tribunal)

2.Royal Sundaram Alliance Insurance
Company Limited
Nos.45 and 46, Whites Road
Chennai-600 014. .. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 28.03.2014 made in M.C.O.P.No.3760 of 2011 on the file of Motor Accident Claims Tribunal, IV Small Causes Court, Chennai.

For Appellants : Mr.Arundattan
for Mr.C.Munusamy
For R2 : Mr.M.Krishnamorrthy
R1 : Exparte

J U D G M E N T

This matter is heard through "Video-Conferencing".

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 28.03.2014 made in M.C.O.P.No.3760 of 2011 on the file of Motor Accident Claims Tribunal, IV Small Causes Court, Chennai.

2.The appellants are the claimants in M.C.O.P.No.3760 of 2011 on the file of Motor Accident Claims Tribunal, IV Small Causes Court, Chennai. They filed the said claim petition claiming a sum of Rs.40,00,000/- as compensation for the death of one J.Sathish, who died in the accident that took place on 30.01.2011.

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 2nd respondent/Insurance Company being insurer of the said lorry to pay a sum of Rs.25,76,400/- 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 aged 31 years at the time of accident, he was working as an Executive in a private concern and was earning a sum of Rs.15,438/- per month. The appellants have examined the employer as P.W.2 and marked offer letter and pay slip as Exs.P9 and P10 respectively to prove the avocation and income of the deceased. The Tribunal without considering the same, erroneously fixed a sum of Rs.6,000/- per month as notional income of the deceased. The Tribunal ought to have awarded 100% enhancement towards future prospects. The Tribunal ought to have applied multiplier '18' instead of multiplier '17'. 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/Insurance Company contended that the deceased was working in a private company and the monthly income fixed by the Tribunal is not meagre. The amounts awarded by the Tribunal towards loss of consortium and loss of love and affection are excessive. 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/Insurance Company and perused the entire materials on record.

8.From the materials on record, it is seen that it is the contention of the appellants that the deceased was working as an Executive in a private company and was earning a sum of Rs.15,438/- per month. The appellants have examined the employer as P.W.2 and marked offer letter and pay slip as Exs.P9 and P10 to prove the avocation and income of the deceased. In the absence of any material evidence with regard to income of the deceased, the Tribunal fixed a sum of Rs.9,000/- per month including future prospects as notional income of the deceased. The accident is of the year 2011 and the notional income fixed by the Tribunal is meagre. Hence, a sum of Rs.9,000/- per month is fixed as notional income of the deceased. The deceased was aged 31 years at the time of accident. The Tribunal has not granted any enhancement towards future prospects. As per the judgment of the Hon'ble Apex Court reported in 2017(2)TNMAC 609 (SC) (National Insurance Company v. Pranay Sethi), the appellants are entitled to 40% enhancement towards future prospects. The Tribunal applied multiplier '17', which is not proper. As per the judgment of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC Supreme Court (Sarla Verma vs. Delhi Transport Corporation), the correct multiplier applicable is '16'. By deducting 1/3rd towards personal expenses, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.16,12,800/- (Rs.9,000/- + 3600 [Rs.9,000/- X 40%] X 12 X 16 X 2/3). The Tribunal has awarded a sum of Rs.50,000/- towards loss of consortium to the 1st appellant, which is excessive and hence, the same is hereby reduced to Rs.40,000/-. The Tribunal has awarded a sum of Rs.25,000/- each towards loss of love and affection to the appellants 1 and 2 and Rs.1,00,000/- towards loss of love and affection to the 3rd appellant, son of the deceased, which are excessive. The appellants 2 and 3, who are mother and son of the deceased are entitled to a sum of Rs.40,000/- each towards loss of love and affection. The 1st appellant is not entitled to any compensation towards loss of love and affection and therefore, a sum of Rs.25,000/- awarded by the Tribunal to the 1st appellant is hereby set aside. The Tribunal has not awarded any compensation towards loss of estate and hence, a sum of Rs.15,000/- is awarded towards loss of estate. The amounts awarded by the Tribunal towards medical expenses and funeral expenses are just and reasonable and hence, the same are hereby 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 or reduced
1.	Loss of dependency	12,24,000	16,12,800	Enhanced
2.	Loss of consortium to the 1st appellant	50,000	40,000	Reduced
3.	Loss of love and affection to the 1st appellant	25,000	-	Set aside

4.	Loss of love and affection to the appellants 2 and 3	1,25,000	80,000	Reduced
5.	Medical expenses	11,37,397	11,37,397	Confirmed
6.	Funeral expenses	15,000	15,000	Confirmed
7.	Loss of estate	-	15,000	Granted
	Total	25,76,397 rounded off to 25,76,400	29,00,197 rounded off to 29,00,200	Enhanced by Rs.3,23,800/-

9.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.25,76,400/- is hereby enhanced to Rs.29,00,200/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd respondent/Insurance Company is directed to deposit the 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. On such deposit, the appellants 1 and 2 are permitted to withdraw their respective share of the award amount now determined by this Court as per the apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn. The share amount of the minor/3rd appellant is directed to be deposited in any one of the Nationalised Banks till the minor attains majority. The 1st appellant, being mother of the minor/3rd appellant, is permitted to withdraw the accrued interest once in three months for the welfare of the minor. No costs.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

kj

To

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

Copy To

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

+1cc to Mr.M.Krishnamorrthy, Advocate, S.R.No.42847
+1cc to Mr.C.Munusamy, Advocate, S.R.No.42869

C.M.A.No.2395 of 2014

SSI(CO)
GN(27/08/2021)