

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2578 of 2014

1.Vijaya Amma

2.Shibu

3.Kannan

4.Manikandan

5.Kunju Lakshmi Amma .. Appellants/Petitioners

Vs.

1.N.Srinivasan
(1st respondent remained exparte before the Tribunal)

2.Bajaj Alliance General Insurance
Company Ltd.,
No.25/26, Prince Tower,
College Road, Nungambakkam,
Chennai 49. ... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 15.12.2012 made in M.C.O.P.No.2731 of 2009 on the file of the Motor Accident Claims Tribunal, Chief Small Causes Court, Chennai.

For Appellants : Mr.F.Terry Chellaraja

For Respondents : Mr.S.Arunkumare for R2

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the Tribunal in the award dated 15.12.2012 made in M.C.O.P.No.2731 of 2009 on the file of the Motor Accident Claims Tribunal, Chief Small Causes Court, Chennai.

2.The appellants are the claimants in M.C.O.P.No.2731 of 2009 on the file of the Motor Accident Claims Tribunal, Chief Small Causes Court, Chennai. They filed the above said claim petition, claiming a sum of Rs.6,00,000/- as compensation for the death of one Ramachandran, who died in the accident that took place on 27.02.2009.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the rider of the motorcycle, belonging to the first respondent and directed the second respondent, being insurer of the said motorcycle to pay a sum of Rs.4,24,500/- 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 watchman in Manasa Garden Apartments and was earning a sum of Rs.6,000/- per month. The Tribunal fixed only a meagre sum of Rs.4,500/- per month as notional income of the deceased. The deceased was aged 50 years at the time of accident and the Tribunal has not granted any enhancement towards future prospects. The Tribunal ought to have deducted 1/5th towards personal expenses of the deceased instead of 1/4th, adopted correct multiplier and granted compensation towards pecuniary benefits. The Tribunal has not awarded any amount towards loss of estate. The amounts awarded by the Tribunal under different heads are also meagre and prayed for enhancement of compensation.

6.Per contra, the learned counsel appearing for the second respondent-Insurance Company contended that the Tribunal, in the absence of any material evidence to prove the avocation and income of the deceased, fixed a sum of Rs.4,500/- per month as notional income and the same is not meagre. The Tribunal after considering the materials available on record, has awarded just compensation. 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-Insurance Company and perused the entire materials on record.

8.It is the contention of the appellants that the deceased was working as a watchman and was earning a sum of Rs.6,000/- per month at the time of accident. The appellants failed to

prove the said contention. In the absence of any material evidence to prove the avocation and income of the deceased, the Tribunal fixed a sum of Rs.4,500/- per month as notional income of the deceased. The accident is of the year 2009 and the notional income fixed by the Tribunal is meagre. Hence, a sum of Rs.6,000/- per month is fixed as notional income of the deceased. The Tribunal having fixed the age of the deceased as 56 years based on Ex.P4-Post Mortem Certificate, has not awarded any enhancement towards future prospects. The appellants are entitled to 10% enhancement towards future prospects. There are five dependants of the deceased and hence by deducting $1/4^{th}$ towards personal expenses deceased and applying multiplier 9, the amount awarded by the Tribunal towards loss of pecuniary benefits is modified to Rs.5,34,600/- [Rs.6,000/- + Rs.600/- (Rs.6,000/- of 10%) x 12 x 9 x $3/4$]. The amounts awarded by the Tribunal towards loss of consortium to the first appellant & funeral expenses are meagre and hence, the same are hereby enhanced to Rs.40,000/- and Rs.15,000/- respectively. The Tribunal has not awarded any amount towards loss of estate. Therefore, a sum of Rs.15,000/- is awarded towards loss of estate. The amount awarded by the Tribunal under the head loss of love & affection is just and reasonable and hence, the same is hereby confirmed.

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:

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S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of pecuniary benefits	3,64,500/-	5,34,600/-	Enhanced
2.	Loss of consortium to the 1 st appellant	10,000/-	40,000/-	Enhanced
3.	Loss of love and affection to the appellants 2 to 5	40,000/-	40,000/-	Confirmed
4.	Funeral expenses	10,000/-	15,000/-	Enhanced
5.	Loss of estate	-	15,000/-	Granted
	Total	4,24,500/-	6,44,600/-	Enhanced by Rs.2,20,100/-

10. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.4,24,500/- is hereby enhanced to Rs.6,44,600/- 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 necessary Court fee, if any on the enhanced amount of compensation. The second 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. On such deposit, the appellants are permitted to withdraw their respective share of the award amount, as per the ratio of apportionment fixed by the Tribunal, along with proportionate interest and costs, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. No costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

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

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

+1 CC to Mr.S.Arunkumar, Advocate sr 24187

+1 CC to M/s.M. Malar, Advocate sr 24236.

C.M.A.No.2578 of 2014

SAI (CO)
SP(20/11/2020)



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