

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2579 of 2014

1.Leela Mary
2.Winnarasi
3.Minor. Francis Sangeetha
4.Minor. Motcha Rahani
(Minor respondents 3 & 4 are represented
by the next friend mother Leela Mary) ... Appellants/Claimants
Vs.

1.R.Raja

2.Oriental Insurance Company Limited,
Oriental house,
New No.216, Prakasam Salai,
Broadway,
Chennai-600 108. ... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 04.02.2013 in M.C.O.P.No.454 of 2011 on the file of the Motor Accident Claims Tribunal, Small Causes Court No.VI, Chennai.

For Appellants : Mr.F.Terry Chella Raja

For R2 : Mr.J.Chandran

For R1 : Ex-parte

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 04.02.2013 in M.C.O.P.No.454 of 2011 on the file of the Motor Accident Claims Tribunal, Small Causes Court No.VI, Chennai.

2.The appellants are the claimants in M.C.O.P.No.454 of 2011 on the file of the Motor Accident Claims Tribunal, Small Causes Court No.VI, Chennai. They filed the said claim petition

claiming a sum of Rs.15,00,000/- as compensation for the death of one Arul, who died in the accident that took place on 29.07.2010.

3.The Tribunal, after 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 car, belonging to the first respondent and directed the 2nd respondent/Insurance Company to pay a sum of Rs.6,00,000/- 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 for the appellants contended that the deceased was working as a Watchman at a Church at Mylapore, Chennai, and was earning a sum of Rs.7,000/- per month, at the time of accident. The Tribunal has fixed a meagre sum of Rs.4,500/- as monthly income of the deceased. The Tribunal ought to have fixed a sum of Rs.7,000/- as monthly income of the deceased. As per Ex.P2/post-mortem certificate, the deceased was aged 45 years at the time of accident and the Tribunal has not granted any enhancement towards future prospects. There are four dependants of the deceased. The Tribunal erred in deducting 1/3rd as against 1/4th towards personal expenses of the deceased. The Tribunal failed to award any amount towards loss of estate. The amounts granted by the Tribunal towards loss of consortium, loss of love and affection, and funeral expenses are meagre and prayed for enhancement of compensation.

6.Per contra, Mr.J.Chandran, learned counsel appearing for the second respondent contended that the appellants have not let in any material evidence to prove that the deceased was earning a sum of Rs.7,000/- as monthly income at the time of accident. In the absence of material evidence, the Tribunal fixed a sum of Rs.4,500/- as monthly income, which is not meagre. The appellants are not entitled to any enhancement towards future prospects. The amounts awarded by the Tribunal under different heads are not meagre and prayed for dismissal of the appeal.

7.Heard the learned counsel appearing for the appellants as well as the second respondent and perused the materials available on record.

8.It is the contention of the appellants that the deceased was aged 45 years at the time of accident and was working as a Watchman in a Church at Mylapore, Chennai and was earning a sum of Rs.7,000/- per month. However, the appellants have failed to prove the said contention. In the absence of any material

evidence, the Tribunal fixed a sum of Rs.4,500/- per month as notional income of the deceased. There are four dependants of the deceased. Hence, the Tribunal has rightly deducted 1/3rd towards personal expenses of the deceased. The Tribunal has not granted any amount towards future prospects. The accident is of the year 2010. In the considered opinion of this Court, the amount fixed by the Tribunal as monthly income of the deceased is meagre. Therefore, a sum of Rs.7,000/- per month is fixed as the notional income of the deceased. The appellants are entitled to 25% enhancement towards 'future prospects'. As per Ex.P2, the deceased was aged 45 years at the time of accident. Hence, the correct multiplier applicable is '14'. Accordingly, the compensation awarded by the Tribunal towards loss of income is enhanced to Rs.11,02,500/- (Rs.7,000/- + Rs.1,750/- (25% of Rs.7,000/-) X 12 X 14 X 3/4). The Tribunal has awarded a sum of Rs.30,000/- towards loss of consortium to the 1st appellant and the same is hereby enhanced to Rs.40,000/-. The amounts granted by the Tribunal towards loss of love and affection to the appellants 2 to 4 and funeral expenses are meagre and hence the same are enhanced to Rs.60,000/- (Rs.20,000/- x 3) towards loss of love & affection and Rs.15,000/- towards funeral expenses. 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	5,40,000	11,02,500	enhanced
2.	Loss of consortium to the 1 st appellant	30,000	40,000	enhanced
3.	Loss of love and affection to the appellants 2 to 4	20,000	60,000	enhanced
4.	Funeral expenses	10,000	15,000	enhanced
	Total	Rs.6,00,000/-	Rs.12,17,500/-	Enhanced by Rs.6,17,500/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.6,00,000/- is hereby enhanced to Rs.12,17,500/- 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 Court fee, if any on the enhanced amount of compensation. The 2nd respondent/Insurance Company 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 1 and 2 are permitted to withdraw their respective share of the enhanced award amount 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 minors, namely the 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, are 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

//True Copy//

Sub Assistant Registrar

gbi

To

1.The Judge,
Motor Accident Claims Tribunal,
Small Causes Court No.VI, Chennai.

Copy to :
The Section Officer,
V.R. Section,
High Court, Madras.

+1 cc to M/s.J.Chandran, Advocate Sr.No. 23296
+1 cc to M/s.M.Malar , Advocate Sr.No. 22282

C.M.A.No.2579 of 2014

SSI (CO)
RMP (16/12/2020)