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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2787 of 2014

1.M.Suguna
2.I.Chitra
3.M.Pavun
4.M.Suresh
5.Kannaiyan
6.Pappammal

.. Appellants/Petitioners

Vs.

1.R.Vijayalakshmi
(R1 remained exparte before Tribunal)
2.National Insurance Company Limited,
No.661, Trunk Road,
Poonamallee, Chennai - 600 056.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 02.04.2014 made in M.C.O.P.No.3343 of 2009 on the file of the Motor Accidents Claims Tribunal, Special Sub Court No.I, Chennai.

For Appellants : Mr.R.Kalai Arasan
for Mr.N.M.Muthurajan

For R2 : Mr.G.Udayasankar

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 02.04.2014 made in M.C.O.P.No.3343 of 2009 on the file of the Motor Accidents Claims Tribunal, Special Sub Court No.I, Chennai.

3.The appellants are the claimants in M.C.O.P.No.3343 of 2009 on the file of the Motor Accidents Claims Tribunal, Special Sub Court No.I, Chennai. They filed the above said claim petition claiming a sum of Rs.10,00,000/- as compensation for



the death of one K.Mari, who died in the accident that took place on 26.08.2009.

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 tanker lorry belonging to the 1st respondent and directed the 2nd respondent-Insurance Company to pay a sum of Rs.8,17,000/- 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.

6.The learned counsel appearing for the appellants contended that at the time of accident, the deceased was aged 48 years, working as Painter and was earning a sum of Rs.10,000/- per month. The Tribunal has fixed a meagre sum of Rs.6,000/- per month as notional income of the deceased including future prospects. The Tribunal ought to have fixed the monthly income on the basis of the age of the deceased and granted future prospects separately. There are seven dependants of the deceased and the deduction of 1/4th made by the Tribunal towards personal expenses of the deceased is not correct. The amounts awarded by the Tribunal towards loss of love and affection and funeral expenses are meagre. The Tribunal has not awarded any amount towards loss of expectation of life and prayed for enhancement of compensation.

7.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the appellants failed to prove the avocation and income of the deceased. In the absence of any material evidence with regard to avocation and income of the deceased, a sum of Rs.6,000/- per month including future prospects fixed by the Tribunal as notional income of the deceased is not meagre. The Tribunal has awarded excessive amount of Rs.50,000/- each towards loss of consortium and loss of love and affection. Hence, the appellants are not entitled to any enhancement under other head. The deduction of 1/4th made by the Tribunal towards personal expenses is proper. The Tribunal considering the entire materials available on record, has awarded a sum of Rs.8,17,000/- as compensation to the appellants, which is not meagre and prayed for dismissal of the appeal.

8.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.

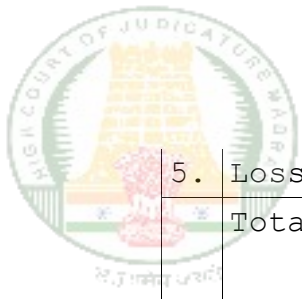
9.From the materials available on record, it is seen that it is the contention of the appellants that at the time of



accident, the deceased was aged 48 years, working as Painter and was earning a sum of Rs.10,000/- per month. But they failed to prove the said contention. In the absence of any material evidence with regard to avocation and income of the deceased, the Tribunal fixed a sum of Rs.6,000/- per month including future prospects as notional income of the deceased. The accident occurred in the year 2009 and the notional income fixed by the Tribunal is meagre. Therefore, a sum of Rs.6,000/- per month is fixed as notional income of the deceased. The deceased was aged 48 years at the time of accident. 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 deceased was aged 48 years at the time of accident and the Tribunal has rightly adopted multiplier '13'. There are seven dependants of the deceased and the Tribunal erroneously deducted $1/4^{\text{th}}$ towards personal expenses instead of deducting $1/5^{\text{th}}$. In view of the above, the amount awarded by the Tribunal towards loss of dependency is modified to Rs.9,36,000/- {Rs.7,500/- [(Rs.6,000/- + Rs.1,500/- (25% of Rs.6,000/-)) x 12 x 13 x $4/5$]}. The Tribunal has awarded a sum of Rs.50,000/- towards loss of consortium to 1st appellant, which is excessive and hence the same is reduced to Rs.40,000/-. The amounts awarded by the Tribunal towards loss of love and affection and funeral expenses are just and reasonable and hence, the same are hereby confirmed. 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.

10. 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 dependency	7,02,000/-	9,36,000/-	Enhanced
2.	Loss of consortium to 1 st appellant	50,000/-	40,000/-	Reduced
3.	Loss of love and affection to appellants 2 to 6	50,000/-	50,000/-	Confirmed
4.	Funeral expenses	15,000/-	15,000/-	Confirmed



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5.	Loss of estate	-	15,000/-	Granted
	Total	Rs.8,17,000/-	Rs.10,56,000/-	Enhanced by Rs.2,39,000/-

11. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.8,17,000/- is hereby enhanced to Rs.10,56,000/- 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 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.3343 of 2009 on the file of the Motor Accidents Claims Tribunal, Special Sub Court No.I, Chennai. 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. The appellants are directed to pay the necessary Court fee on the enhanced award amount. No costs.

Sd/-

Assistant Registrar(CS-VIII)

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Sub Assistant Registrar

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To

1.The Special Subordinate Judge No.I,
Motor Accidents Claims Tribunal,
Chennai.

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

+1cc to Mr.G.Udaya Sankar, Advocate, S.R.No.40043

C.M.A.No.2787 of 2014

SPD(CO)
CB(19/08/2021)