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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2881 of 2014

1.P. Swaminathan

2.S. Veeran

3.S. Vasanthi

.. Appellants/Petitioners

Vs.

1.M/s. P.R.M. Roadways (P) Ltd.,
No.5, V.R.P. Chatram,
Chennai to Bangalore High Road,
Sriperumbudur Taluk,
Kancheepuram District 602 105.

2.New India Assurance Co. Ltd.,
C/o. Motor III Party Claims Office,
No.45, Moore Street,
Chennai 1.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 21.03.2014, made in M.C.O.P. No.215 of 2013, on the file of the IV Judge, Court of Small Causes, (Motor Accident Claims Tribunal), Chennai.

For Appellants : Mr.T.G. Balachandran

For Respondents: No appearance (For R1)

Mr.D. Bhaskaran (For R2)

J U D G M E N T

This matter is heard through "Video Conferencing".

This Civil Miscellaneous Appeal has been filed for enhancement of the compensation granted by the Tribunal in the



award dated 21.03.2014, made in M.C.O.P. No.215 of 2013, on the file of the IV Judge, Court of Small Causes, (Motor Accident Claims Tribunal), Chennai.

2.The appellants filed M.C.O.P. No.215 of 2013, on the file of the IV Judge, Court of Small Causes, (Motor Accident Claims Tribunal), Chennai, claiming a sum of Rs.7,00,000/- as compensation for the death of one S.Muni Ammal who died in the accident that took place on 30.10.2012.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that accident occurred due to rash and negligent driving by the driver of the Bus belonging to the 1st respondent and directed the 2nd respondent as insurer of the vehicle to pay a sum of Rs.1,94,000/- as compensation to the appellants.

4.Not being satisfied with the amounts granted by the award dated 21.03.2014, made in M.C.O.P. No.215 of 2013, the appellants have come out with the present appeal.

5.The learned counsel appearing for the appellants contended that at the time of accident, the deceased was working as a House Maid and was earning a sum of Rs.6,000/- per month. The Tribunal erroneously fixed only a sum of Rs.3,000/- per month as notional income. The deceased was aged 60 years at the time of accident. The Tribunal erroneously applied multiplier '8', instead of applying the correct multiplier '9'. There are three dependants of the deceased. The Tribunal erroneously deducted 50% towards personal expenses of the deceased, instead of deducting 1/3rd. The amounts awarded by the Tribunal towards loss of love and affection and loss of consortium are meagre. The Tribunal failed to award any amount towards loss of estate and prayed for enhancement of the compensation.

6.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 to prove the avocation and income of the deceased, the Tribunal rightly fixed a sum of Rs.3,000/- as monthly income and granted compensation which is not meagre. The total compensation awarded by the Tribunal under different heads are not meagre. The appellants have not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

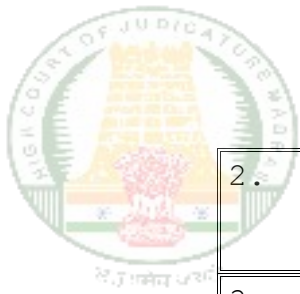
7.Though notice has been served on the 1st respondent and their name is printed in the cause list, there is no representation for them either in person or through counsel.



8. Heard the learned counsel appearing for the appellants as well as the 2nd respondent-Insurance Company and perused the materials available on record.

9. From the materials on record, it is seen that it is the contention of the appellants that at the time of accident, the deceased was a House Maid and was earning a sum of Rs.6,000/- per month. In the absence of any material evidence to prove the same, the Tribunal fixed a meagre sum of Rs.3,000/- per month as notional income of the deceased. The accident is of the year 2012. Considering the year of accident, a sum of Rs.6,000/- per month, as claimed by the appellants, is fixed as notional income of the deceased. The appellants contended that the deceased was aged 60 years at the time of accident. The Tribunal considering Ex.P3 - Post Mortem Certificate and Ex.P5- death certificate, fixed the age of the deceased as 60 years, but erroneously applied multiplier '8'. As per the judgment of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC Supreme Court [Sarla Verma & others vs. Delhi Transport Corporation & another], the correct multiplier applicable is '9'. The Tribunal failed to award any enhancement towards future prospects. As per the judgment of the Hon'ble Apex Court reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and others], the appellants are entitled to 10% enhancement towards future prospects. There are three dependants of the deceased. The Tribunal erroneously deducted 50% towards personal expenses, instead of 1/3rd. Applying multiplier '9' and after deducting 1/3rd towards personal expenses of the deceased, the amounts awarded by the Tribunal towards loss of dependency is modified to Rs.4,75,200/- {[Rs.6,000/- + Rs.600/- (10% of Rs.6,000/-)] x 12 x 9 x 2/3}. The Tribunal has awarded a meagre sum of Rs.5,000/- towards loss of consortium to the 1st appellant. The 1st appellant being husband of the deceased is entitled to Rs.40,000/- towards loss of consortium. The Tribunal failed to award any amount towards loss of estate. The appellants are entitled to a sum of Rs.15,000/- towards loss of estate. The amounts granted by the Tribunal under other heads are just and reasonable and hence, the same are 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
1.	Loss of dependency	1,44,000/-	4,75,200/-	Enhanced



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2.	Loss of consortium to 1 st appellant	5,000/-	40,000/-	Enhanced
3.	Loss of love and affection to appellants 2 & 3	30,000/-	30,000/-	Confirmed
4.	Funeral expenses	15,000/-	15,000/-	Confirmed
5.	Loss of estate	-	15,000/-	Granted
	Total	1,94,000/-	5,75,200/-	Enhanced by Rs.3,81,200/-

10. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.1,94,000/- is enhanced to Rs.5,75,200/- 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, 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.215 of 2013. On such deposit, the appellants are permitted to withdraw their share of the award amount, now determined by this Court, along with proportionate interest and costs, as per the ratio of apportionment fixed by the Tribunal, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. No costs.

Sd/-
Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

gsa

To

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



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

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C.M.A.No.2881 of 2014

VBA (CO)
GMV (25/08/2021)