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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3423 of 2014

1.P.Anjalai

2.P.Jayavel (Minor)

(Minor represented by his mother
and next friend, the 1st appellant)

..Appellants

Vs.

1.K.Ranganathan

(R1 remained exparte before the Tribunal
and hence notice to R1 is dispensed with)

2.The New India Assurance Company Ltd.

Motor Third Party Cell

No.45, Moore street, 5th floor

Chennai-600 001.

...Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 08.07.2014 made in M.C.O.P.No.4636 of 2006 on the file of Motor Accident Claims Tribunal, Chief Small Causes Court, Chennai.

For Appellants : Mr.R.Kalai Arasan

R1 : Exparte

For R2 : Mr.M.Krishnamoorthy

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 08.07.2014 made in M.C.O.P.No.4636 of 2006 on the file of Motor Accident Claims Tribunal, Chief Small Causes Court, Chennai.

2.The appellants are claimants in M.C.O.P.No.4636 of 2006 on the file of Motor Accident Claims Tribunal, Chief Small Causes



Court, Chennai. They filed the said claim petition claiming a sum of Rs.10,00,000/- as compensation for the death of one P.Palani, who died in the accident that took place on 20.06.2006.

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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 1st respondent as well as the 2nd respondent/Insurance Company being insurer of the said lorry to jointly and severally pay a sum of Rs.7,23,000/- 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 appearing for the appellants contended that the deceased was aged 20 years at the time of accident, he was working in M/s.Balaji Powder Coating Co., Thuriapakkam, Chennai and was earning a sum of Rs.4,500/- per month. The Tribunal ought to have fixed a sum of Rs.6,500/- per month as notional income of the deceased as per the judgment of the Hon'ble Apex Court. The Tribunal failed to grant any enhancement towards future prospects. The Tribunal ought to have awarded 100% enhancement towards future prospects. The Tribunal has awarded a lumpsum of Rs.25,000/- towards loss of future income, which is meagre. The Tribunal has awarded only a meagre sum of Rs.20,000/- towards loss of love and affection. The total compensation awarded by the Tribunal are meagre and prayed for enhancement of compensation.

6.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, the notional income fixed by the Tribunal is not meagre. The deceased was a bachelor at the time of accident. The Tribunal erred in deducting 1/3rd instead of 1/2 towards personal expenses.The total compensation awarded by the Tribunal under different heads are not meagre. 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 2nd respondent/Insurance Company and perused the entire materials available on record.

8.It is the contention of the appellants that the deceased was working in M/s.Balaji Powder Coating Co., Thuriapakkam,



Chennai and was earning a sum of Rs.4,500/- per month. The Tribunal accepted the same and fixed Rs.4,500/- per month as notional income of the deceased as claimed by the appellants, which is proper. The deceased was aged 20 years at the time of accident and the Tribunal applied multiplier '18'. The deceased was a bachelor at the time of accident. The Tribunal erred in deducting $1/3^{\text{rd}}$ instead of $1/2$ towards personal expenses of the deceased. 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. Thus, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.6,80,400/- (Rs.4,500/- + 1800 [Rs.4,500/- X 40%] X 12 X 18 X $1/2$). In view of granting 40% enhancement towards future prospects, the sum of Rs.25,000/- awarded by the Tribunal towards loss of future income is liable to be set aside and it is hereby set aside. The Tribunal has awarded a sum of Rs.10,000/- each towards loss of love and affection, which is meagre. The 1st appellant, mother of the deceased lost her elder son at his young age and the 2nd respondent has lost his brother. Therefore, a sum of Rs.40,000/- each is awarded towards loss of love and affection to the appellants. A sum of Rs.25,000/- awarded by the Tribunal towards funeral expenses is excessive and hence, the same is hereby reduced to Rs.15,000/-. 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. A sum of Rs.5,000/- awarded by the Tribunal towards transportation is just and reasonable and hence, the same is 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	6,48,000	6,80,400	Enhanced
2.	Loss of love and affection	20,000	80,000	Enhanced
3.	Funeral expenses	25,000	15,000	Reduced
4.	Transportation	5,000	5,000	Confirmed
5.	Loss of future income	25,000	-	Set aside



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6.	Loss of estate	-	15,000	Granted
	Total	7,23,000	7,95,400	Enhanced by Rs.72,400/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.7,23,000/- is hereby enhanced to Rs.7,95,400/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The respondents are jointly and severally 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 1st appellant is permitted to withdraw her respective share of the award amount as per the apportionment fixed by the Tribunal along with proportionate interest and costs, less the amount if any, already withdrawn. The share of the minor/2nd appellant is directed to be deposited in any one of the Nationalised Banks till the minor attains majority. The 1st appellant being the mother of the 2nd appellant/minor is permitted to withdraw the accrued interest once in three months for the welfare of the minor. No costs.

s/d-
Assistant Registrar(CO)

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Sub-Assistant Registrar

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To

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

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

+2 Ccs to Mr.N.M. Muthurajan, Advocate sr 38145.

C.M.A.No.3423 of 2014

VBA (CO)
SP(17/08/2021)