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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.5 of 2014

1.R.M.Kaveri

2.R.M.Vivek Ramasamy

3.R.M.Alagu Kumarappan (minor)
(3rd appellant minor represented by
his mother and guardian, the 1st
appellant)

4.K.M.Saraswathi

.. Appellants/Claimants

Vs.

1.P.Alagappan

2.Reliance General Insurance Co. Ltd.
Plot No.2054, 2nd avenue, 2nd floor
Next to Senthil Nursing Home
Anna nagar, Chennai-40.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 16.09.2013 made in M.C.O.P.No.1769 of 2011 on the file of Motor Accident Claims Tribunal, IV Small Causes Court, Chennai.

For Appellants : Mr.K.Varadha Kamaraj
for Mr.V.Mohan Choudary

For R2 : Mrs.C.Bhuvana Sundari
For R1 : Exparte

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 16.09.2013 made in M.C.O.P.No.1769 of 2011 on the file of Motor Accident Claims Tribunal, IV Small Causes Court, Chennai.



2.The appellants are the claimants in M.C.O.P.No.1769 of 2011 on the file of Motor Accident Claims Tribunal, IV Small Causes Court, Chennai. They filed the said claim petition claiming a sum of Rs.35,00,000/- as compensation for the death of one K.M.Ramasamy, who died in the accident that took place on 24.03.2011.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the deceased as well as the driver of the lorry belonging to the 1st respondent, fixed 50 : 50 contributory negligence on the part of the deceased as well as the driver of the lorry, awarded a sum of Rs.12,45,000/- as compensation to the appellants and directed the 2nd respondent being insurer of the said lorry to pay a sum of Rs.6,22,500/- being 50% of the award amount as compensation to the appellants.

4.Challenging the portion of the award fixing 50% contributory negligence on the part of the deceased and not being satisfied with the amounts awarded by the Tribunal, the appellants have come out with the present appeal seeking enhancement of compensation.

5.Though the learned counsel appearing for the appellants raised various grounds with regard to negligence in the grounds of appeal, at the time of arguments, he has restricted his arguments only with regard to quantum of compensation awarded by the Tribunal.

6.The learned counsel appearing for the appellants contended that the deceased was aged 47 years at the time of accident, he was a partner in Premier Electrical and Electronics and was earning a sum of Rs.30,000/- per month. The appellants have produced Exs.P6 to P15 to prove the avocation and income of the deceased. The Tribunal without considering the same, erroneously fixed a sum of Rs.10,000/- per month as notional income of the deceased including future prospects. The Tribunal failed to grant any enhancement towards future prospects. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

7.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the accident is of the year 2011 and the notional income fixed by the Tribunal is excessive. The Tribunal after considering all the materials available on record in proper perspective, has awarded compensation, which is not meagre. The appellants have not made out any case for enhancement of compensation 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.

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9. From the materials on record, it is seen that it is the contention of the appellants that the deceased was a partner in Premier Electrical and Electronics and was earning a sum of Rs.30,000/- per month. The appellants have produced Exs.P6 to P15 to prove the avocation and income of the deceased. However, the Tribunal rejected the same stating that the profit in the partnership firm or payment to the deceased has not been apportioned. Considering the qualification of the deceased, the Tribunal fixed a sum of Rs.10,000/- per month as notional income of the deceased including future prospects. The accident is of the year 2011. The notional income fixed by the Tribunal at Rs.10,000/- including future prospects is not correct. The notional income of the deceased is fixed at Rs.10,000/- per month. The deceased was aged 47 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 v. Pranay Sethi), the appellants are entitled to 25% enhancement towards future prospects. The Tribunal applied multiplier '13' and deducted 1/4th towards personal expenses and the same is proper. Thus, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.14,62,500/- (Rs.10,000/- + 2500 [Rs.10,000/- X 25%] X 12 X 13 X 3/4). The Tribunal awarded a sum of Rs.25,000/- towards loss of consortium to the 1st appellant and Rs.10,000/- towards funeral expenses, which are meagre and hence, the same are hereby enhanced to Rs.40,000/- and Rs.15,000/- respectively. A sum of Rs.40,000/- awarded by the Tribunal towards loss of love and affection is just and reasonable and hence, the same is hereby confirmed. The Tribunal has not awarded any amount towards loss of estate. Hence, a sum of Rs.15,000/- is awarded towards loss of estate. 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	11,70,000	14,62,500	Enhanced
2.	Loss of consortium	25,000	40,000	Enhanced



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3.	Loss of love and affection	40,000	40,000	Confirmed
4.	Funeral expenses	10,000	15,000	Enhanced
5.	Loss of Estate	-	15,000	Granted
	Total	12,45,000	15,72,500	
	50% of the award amount	6,22,500	7,86,250	Enhanced by Rs.1,63,750 /-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.12,45,000/- is hereby enhanced to Rs.15,72,500/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd respondent is directed to deposit 50% of the award amount i.e., Rs.7,86,250/- 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, 2 and 4 are permitted to withdraw their respective share of the award amount now determined by this Court as per the apportionment made by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn. The share amount of the minor/3rd appellant is directed to be deposited in any one of the Nationalised Banks till the minor attains majority. The 1st appellant, being mother of the minor/3rd appellant, is permitted to withdraw the accrued interest once in three months for the welfare of the minor. No costs.

Sd/-

Assistant Registrar(CCC)

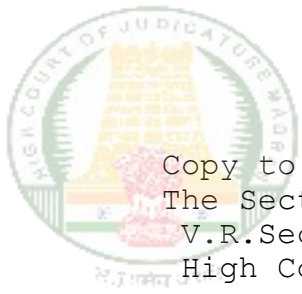
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Sub Assistant Registrar

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To

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



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

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+2cc to Mr.V.Mohan Coundary, Advocate, S.R.No.40006

C.M.A.No.5 of 2014

SSI (CO)
CB(26/08/2021)