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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.540 of 2014

1.A. Raghavan
2.R. Ganapathy .. Appellants/Claimants

Vs.

1.R.L. Sundara Raj
(R1 remained exparte before the Tribunal)

2.The New India Assurance Co. Ltd.,
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 28.06.2005, made in M.C.O.P. No.290 of 2003, on the file of the Additional District Court, Fast Track Court - IV, (Motor Accident Claims Tribunal), Poonamallee.

For Appellants : Ms. Jayanthi
for M/s. J. Mahalingam

For Respondents: Mr. M. Krishnamoorthy (For R2)

J U D G M E N T

The matter is heard through "Video Conferencing".

This appeal has been filed for enhancement of compensation granted by the award dated 28.06.2005, made in M.C.O.P. No.290 of 2003, on the file of the Additional District Court, Fast Track Court - IV, (Motor Accident Claims Tribunal), Poonamallee.

2.The appellants-claimants filed M.C.O.P. No.290 of 2003, on the file of the Additional District Court, Fast Track Court - IV, (Motor Accident Claims Tribunal), Poonamallee, claiming a sum of Rs.7,00,000/- as compensation for the death of one R.Lakshmi, who died in the accident that took place on 01.10.2002.



3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by rider of the Motorcycle belonging to the 1st respondent and directed the 2nd respondent as insurer of the vehicle to pay a sum of Rs.1,00,000/- as compensation to the appellants.

4.Not being satisfied with the amounts awarded by the Tribunal to the appellants by the award dated 28.06.2005, made in M.C.O.P. No.290 of 2003, the appellants have come out with the present appeal.

5.The learned counsel appearing for the appellants contended that the deceased was running a Tiffin Shop and was earning a sum of Rs.200/- to Rs.250/- per day. The appellants proved the same by examining P.W.1 and P.W.2. The Tribunal erroneously failed to fix the monthly income of the deceased. The Hon'ble Apex Court held that even for a house wife, a monthly income of Rs.3,000/- can be fixed. The Tribunal ought to have fixed the monthly income of the deceased at Rs.200/- per day. The award of the Tribunal towards loss of expectations and funeral expenses are meagre. The Tribunal failed to grant any amount towards loss of estate, loss of consortium and loss of love and affection 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. The appellants are major and they are not dependents of the deceased. The accident is of the year 2002. The Tribunal considering the entire materials, granted compensation under different heads, which are not meagre. The appellants have not made out any case for enhancement and prayed for dismissal of the appeal.

7.Heard learned counsel appearing for the appellants as well as the 2nd respondent and perused the materials available on record.

8.From the materials on record, it is seen that it is the contention of the appellants that the deceased was running a Tiffin Shop by road side and was earning a sum of Rs.200/- to Rs.250/- per day. To substantiate the same, they have examined 2nd appellant as P.W.1 and friend of the deceased as P.W.2. P.W.2 deposed that the deceased was running the Tiffin shop for the past 7 years and he used to have tiffin from the shop of the deceased. The deceased used to get a sum of Rs.250/- per day. The Tribunal considering the fact that both the appellants have



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independent income, held that deceased would have contributed a sum of Rs.1,000/- per month to the family and awarded compensation. The said calculation is not correct. From the evidence of P.W.1 and P.W.2 it is proved that the deceased was running roadside Tiffin Stall. The Tribunal failed to fix the monthly income of the deceased. The accident is of the year 2002. A sum of Rs.3,000/- per month is fixed as notional income of the deceased including future prospects. The appellants in the claim petition have stated that deceased was aged 47 years at the time of accident. The appellants produced Exs.P3 and P4, Voter ID and Family Card to prove the age of the deceased. In the Post Mortem report, the age of the deceased was mentioned as 50 years, whereas in the death certificate, it was mentioned as 63 years. The Tribunal without fixing the age of the deceased, erroneously applied the multiplier '8' and awarded compensation. In the absence of any material evidence, the age mentioned in the Post Mortem Certificate is the basis for fixing the age. As per the Post Mortem Certificate, the deceased was aged 50 years at the time of accident. As per II Schedule to the Motor Vehicles Act, the correct multiplier applicable for the age group 45 - 50 is '12'. After deducting $\frac{1}{3}$ rd towards personal expenses of the deceased, the amounts awarded by the Tribunal towards loss of expectation is modified to Rs.2,88,000/- [Rs.3,000/- x 12 x 12 x $\frac{2}{3}$]. The Tribunal has not awarded any amount towards loss of love and affection, loss of consortium and loss of estate. The 1st appellant being husband of the deceased is entitled to a sum of Rs.40,000/- towards loss of consortium, 2nd appellant being son of the deceased is entitled to a sum of Rs.20,000/- towards loss of love and affection. The appellants are entitled to a sum of Rs.15,000/- towards loss of estate. The Tribunal has awarded a sum of Rs.4,000/- towards funeral expenses, which is meagre and the same is enhanced to Rs.15,000/-. 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 expectations	96,000/-	2,88,000/-	Enhanced
2.	Loss of consortium to 1 st appellant	-	40,000/-	Granted



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3.	Loss of love and affection to 2 nd appellant	-	20,000/-	Granted
3.	Funeral expenses	4,000/-	4,000/-	Confirmed
4.	Loss of estate	-	15,000/-	Granted
	Total	1,00,000/-	3,67,000/-	Enhanced by Rs.2,67,000/-

9. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.1,00,000/- is enhanced to Rs.3,67,000/- along with 9% interest per annum from the date of petition till the date of deposit. 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, 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.290 of 2003. On such deposit, the appellants are permitted to withdraw their share of the award amount 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-I)

//True copy//

Sub Assistant Registrar

gsa
To

1. The Additional District Court,
Fast Track Court - IV,
(Motor Accident Claims Tribunal),
Poonamallee.

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

+1cc to Mr.M. Krishnamoorthy, Advocate SR.No.41944

C.M.A.No.540 of 2014

GP (CO)
GMY (24/08/2021)