IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.600 of 2014

1.Rekha Devi
2.Dilipkumar (Minor)
(Minor rep. By his mother and
natural guardian, Rekha Devi)

3.Thulsi
4.S.H. Bhawarlal .. Appellants/Petitioners

Vs.

1.T. Thirumalai
(R1 remained exparte before the Tribunal.)

2.United India Insurance Co. Ltd.,
Silingi Buildings,
No.134, Greams Road,
Chennai 600 006. .. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 22.08.2013, made in M.C.O.P. No.3119 of 2010, on the file of the Special Sub Judge- I, Court of Small Causes, (Motor Accident Claims Tribunal), Chennai.

For Appellants : Mr. G. Balaji Prasad
For Respondents : Mr. P. Sankaranarayanan (For R2)
R1 : Exparte

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 22.08.2013, made in M.C.O.P. No.3119 of 2010, on the file of the Special Sub Judge- I, Court of Small Causes, (Motor Accident Claims Tribunal), Chennai.

2.The appellants filed M.C.O.P. No.3119 of 2010, on the file of the Special Sub Judge- I, Court of Small Causes, (Motor Accident Claims Tribunal), Chennai, claiming a sum of

Rs.20,00,000/- as compensation for the death of one B.Mangilal, who died in the accident that took place on 28.05.2010.

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 Lorry belonging to the 1st respondent and directed the 2nd respondent as insurer of the vehicle to pay a sum of Rs.11,22,000/- as compensation to the appellants.

4.Not being satisfied with the amounts granted by the award dated 22.08.2013, made in M.C.O.P. No.3119 of 2010, 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 doing Pawn Broker Business and was earning a sum of Rs.20,000/- per month and to prove the same, they have produced Pawn Broker license as Ex.P12. The Tribunal without considering the same, erroneously fixed a meagre sum of Rs.4,500/- per month as notional income of the deceased. The Tribunal contrary to the rulings of the Hon'ble Apex Court in Sarla Verma & others vs. Delhi Transport Corporation & another case, erroneously granted only Rs.1,500/- per month as future prospects, which is less than 50% for the deceased who was aged 22 years at the time of accident. The amounts awarded by the Tribunal towards loss of love and affection, loss of consortium and funeral expenses are meagre 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 income of the deceased. In the absence of any material evidence to prove the income of the deceased, the Tribunal rightly fixed a sum of Rs.4,500/- as monthly income and granted compensation. The deceased was aged 26 years at the time of accident. The Tribunal erroneously fixed the multiplier '18', as against the correct multiplier '17' and awarded compensation. 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.Heard the learned counsel appearing for the appellants as well as the 2nd respondent-Insurance Company 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 at the time of accident, deceased was aged 22 years at the time of accident. The Tribunal considering the Post Mortem Certificate marked as Ex.P3, rightly fixed the age of the deceased as '26', but erroneously applied multiplier '18'. 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 '17'. The appellants have claimed that at the time of accident, the deceased was doing Pawn Broker Business and was earning a sum of Rs.20,000/- per month. They failed to substantiate the same. In the absence of any material evidence to prove the same, the Tribunal fixed a meagre sum of Rs.6,000/- per month as notional income of the deceased, including future prospects of Rs.1,500/-. The accident is of the year 2010. Considering the year of accident and nature of work done by the deceased, a sum of Rs.8,000/- per month, is fixed as notional income of the deceased. 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 40% enhancement towards future prospects. There are four dependants of the deceased. Applying multiplier '17' and after deducting $1/4^{th}$ towards personal expenses of the deceased, the amounts awarded by the Tribunal towards loss of dependency is modified to Rs.17,13,600/- {[Rs.8,000/- + Rs.3,200/- (40% of Rs.8,000/-)] x 12 x 17 x 3/4}. The Tribunal has awarded excessive amounts towards loss of consortium to the 1^{st} appellant, loss of love and affection to the appellants 2 to 4 and funeral expenses to the appellants. Considering the excessive amounts granted towards loss of consortium, loss of love and affection and funeral expenses, the appellants are not entitled to any enhancement under other heads and hence the same are confirmed.

9.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	9,72,000/-	17,13,600/-	Enhanced
2.	Loss of consortium to 1^{st} appellant	50,000/-	50,000/-	Confirmed

3.	Loss of love and affection to appellants 2 to 4	50,000/-	50,000/-	Confirmed
4.	Funeral expenses including Air ticket charges, Coffin charges	50,000/-	50,000/-	Confirmed
	Total	11,22,000/-	18,63,600/-	Enhanced by Rs.7,41,600/-

10.In the result, the appeal is allowed and the amount awarded by the Tribunal at Rs.11,22,000/- is enhanced to Rs.18,63,600/- 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.3119 of 2010. On such deposit, the appellants 1, 3 and 4 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. The share of the minor 2nd appellant is directed to be deposited in any one of the Nationalized Bank, till the minor attains majority. The 1st appellant, mother of the minor 2nd appellant is permitted to withdraw the accrued interest, once in three months for the welfare of the 2nd appellant. The appellants are directed to pay the necessary court fee on the enhanced award amount. No costs.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

gsa

To

1.The Special Sub Judge- I,
Court of Small Causes,
(Motor Accident Claims Tribunal),
Chennai.

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

+1cc to Mr.G.Balaji, Advocate, S.R.No.42105
+1cc to Mr.P.Sankaranarayanan, Advocate, S.R.No.42006

C.M.A.No.600 of 2014

PVS(CO)
GN(17/11/2021)