IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1198 of 2017

1.Indira
2.Devaraj
3.Bhuvaneswari .. Appellants

Vs.

1.Lakshmi
2.The National Insurance Company Ltd.,
Hasthampatty, Salem 7. .. Respondents
(1st respondent remained exparte before the Tribunal)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 06.02.2015 made in M.C.O.P.No.1622 of 2013 on the file of the Motor Accident Claims Tribunal, Special District Judge, Salem.

For Appellants : Mr.M.R.Thangavel

For Respondents : Mr.J.Chandran for R2

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the Tribunal in the award dated 06.02.2015 made in M.C.O.P.No.1622 of 2013 on the file of the Motor Accident Claims Tribunal, Special District Judge, Salem.

2. The appellants are the claimants in M.C.O.P.No.1622 of 2013 on the file of the Motor Accident Claims Tribunal, Special District Judge, Salem. They filed the above said claim petition, claiming a sum of Rs.20,00,000/- as compensation for the death of one Selvakumar, who died in the accident that took place on 07.09.2013.

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 first respondent and directed the second respondent, as insurer of the vehicle to pay a sum of Rs.5,60,200/- as compensation to the appellants at the first instance and recover the same from the owner of the vehicle, the first respondent herein.

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.Learned counsel appearing for the appellants contended that the the deceased was working as a Labour worker in TSTC, Salem and was earning a sum of Rs.20,000/- per month. The Tribunal fixed only a meagre sum of Rs.6,000/- per month as the income of the deceased. At the time of accident, the deceased was aged 51 years. The Tribunal has not awarded any enhancement towards future prospects. The Tribunal ought not to have deducted 10% of the award amount towards Income Tax. The amounts awarded by the Tribunal under the heads of loss of consortium and loss of love and affection are meagre and prayed for enhancement of compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal, in the absence of any material evidence to prove the avocation and income of the deceased, fixed a sum of Rs.48,000/- per annum as notional income and the same is not meagre. The Tribunal rightly deducted 10% towards Income Tax. The amount awarded by the Tribunal towards funeral expenses is 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 learned counsel appearing for the second respondent-Insurance Company and perused the entire materials on record.

8.It is the contention of the appellants that the deceased was working as a Labour worker in TSTC, Salem and was earning a sum of Rs.20,000/- per month. They have failed to substantiate the same. In the absence of any material evidence to prove the income of the deceased, the Tribunal fixed a sum of Rs.6,000/- per month as notional income of the deceased and the same is meagre. The accident is of the year 2013. The notional income of the deceased is fixed at Rs.12,000/- per month. The Tribunal having fixed the age of the deceased as 52 years based on Ex.P5-Driving license, has not awarded any enhancement towards future prospects. The appellants are entitled to 10% enhancement towards future prospects. By deducting 1/3rd towards personal expenses of the deceased and applying multiplier 11, the amount awarded by the Tribunal towards loss of dependency is modified to Rs.11,61,600/- [Rs.12,000/- + Rs.1,200/-(Rs.12,000/- of 10%)

x 12 x 11]. The Tribunal wrongly deducted 10% towards Income Tax. The Tax slab has been enhanced for the salaried person since 2013. This Court is of the view that TDS ought not to have been deducted for the deceased. Hence, the findings of the Tribunal towards Income Tax deduction is set aside. Rs.20,000/- awarded by the Tribunal towards loss of consortium is meagre and the same is hereby enhanced to Rs.40,000/-. The amount awarded by the Tribunal towards funeral expenses is excessive and the same is reduced to Rs.15,000/-. The Tribunal has not awarded any amount towards loss of estate and hence, a sum of Rs.15,000/- is awarded towards loss of estate. The amount awarded by the Tribunal under the head loss of love and affection 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
1.	Loss of dependency	4,75,200/-	11,61,600/-	Enhanced
2.	Loss of consortium to the 1st appellant	20,000/-	40,000/-	Enhanced
3.	Loss of love and affection to the appellants 2 and 3	40,000/-	40,000/-	Confirmed
4.	Funeral expenses & Transport	25,000/-	15,000/-	Reduced
5.	Loss of estate	-	15,000/-	Granted
	Total	5,60,200/-	12,71,600/-	Enhanced by Rs.7,11,400/-

9.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.5,60,200/- is hereby enhanced to Rs.12,71,600/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellants are directed to pay the Court fee, if any on the enhanced amount of compensation. The second 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, if any, within a period of six weeks from the date of receipt of a copy of this judgment, at the first instance and recover the same from the first respondent. On such deposit, the appellants/ claimants 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. It is made clear that the appellants/claimants shall not be entitled for any interest for the delay period on the amount of Rs.7,11,400/- enhanced by this Court as per the order of this Court dated 23.02.2017 in CM.P.No.16199 of 2016 in C.M.A.SR.No.72888 of 2016. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The Special District Judge,
Motor Accident Claims Tribunal,
Salem.

2.The Section Officer,
VR Section,
High Court,
Madras.

+1 CC to Mr.J.Chandran, Advocate sr 12645
+1 CC to Mr.C. Anbu, Advocate sr 12042.

C.M.A.No.1198 of 2017

SSV(CO)
SP(16/09/2020)