

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No. 1706 of 2017

1.Arumugam

2.Alamelu

.. Appellants/Petitioners

Vs.

1. M/s. Immanuel Agencies,
Plot No.1/2, Mount Poonamallee Road,
Ramapuram,
Chennai.

2. The Oriental Insurance Company Limited,
Oriental House, Prakasam Salai,
Broadway,
Chennai 1.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 14.12.2016, made in M.C.O.P. No. 5812 of 2014, on the file of the Chief Judge, Small Causes Court, (Motor Accident Claims Tribunal), Chennai.

For Appellants : Mr. N.M. Elumalai

For Respondents: No appearance (for R1)

Mr. K. Vinod (for R2)

for M/s. Elveera Ravindran

J U D G M E N T

This appeal has been filed for enhancement of the compensation granted by the award dated 14.12.2016, made in M.C.O.P. No. 5812 of 2014, on the file of the Chief Judge, Small Causes Court, (Motor Accident Claims Tribunal), Chennai.

2.The appellants-claimants filed M.C.O.P. No. 5812 of 2014, on the file of the Chief Judge, Small Causes Court, (Motor Accident Claims Tribunal), Chennai, claiming a sum of Rs.35,00,000/- as compensation for the death of one Manikandan, who died in the accident that took place on 28.05.2014.

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 Tanker Lorry belonging to the 1st respondent and directed the 2nd respondent as insurer of the vehicle to pay a sum of Rs.11,21,000/- as compensation to the appellants.

4.Not being satisfied with the amounts awarded by the Tribunal in the award dated 14.12.2016, made in M.C.O.P. No. 5812 of 2014, the appellants have come out with the present appeal.

5.Learned counsel appearing for the appellants contended that the deceased was working as Electrician in Karthi Construction, Chennai and was earning a sum of Rs.15,000/- per month. The appellants have examined P.W.3 and marked Ex.P10 to substantiate the same. The Tribunal fixed a meagre sum of Rs.7,000/- per month as notional income of the deceased. The amounts awarded by the Tribunal towards loss of love and affection is meagre and prayed for enhancement of the compensation.

6.The learned counsel appearing for the 2nd respondent-Insurance Company made submissions in support of the award passed by the Tribunal 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. Though notice has been served on the 1st respondent and his name is printed in the cause list, there is no representation for him either in person or through counsel.

8.It is the contention of the appellants that the deceased was working as Electrician in Karthi Constructions, Chennai and was earning a sum of Rs.15,000/- per month. The appellants failed to prove the same, even though they examined P.W.3 and marked Ex.P10. In the absence of any acceptable material evidence to prove the avocation and income of the deceased, the Tribunal fixed a sum of Rs.7,000/- per month as notional income of the deceased. The accident is of the year 2014 and the monthly income fixed by the Tribunal is meagre. Hence, a sum of Rs.12,000/- per month is fixed as the notional income of the deceased. The deceased was aged 26 years at the time of

accident. The Tribunal erroneously granted 50% enhancement towards future prospects of the deceased. The same is excessive. The appellants are entitled to only 40% enhancement towards future prospects. Hence, granting 40% enhancement towards future prospects, applying the multiplier '17' and deducting 1/2 towards personal expenses of the deceased, the amounts awarded by the Tribunal towards loss of dependency is modified to Rs.17,13,600/- [Rs.12,000/- + Rs.4,800/- (Rs.12,000/- x 40%) x 12 x 17 x 1/2]. The Tribunal has awarded a sum of Rs.10,000/- each towards loss of love and affection to the appellants, which is meagre. Hence, the same is enhanced to Rs.40,000/- each. The Tribunal has awarded excessive amount of Rs.25,000/- towards funeral expenses. Hence, the same is reduced to Rs.15,000/-. The Tribunal has not awarded any amount towards loss of estate. The appellants are entitled to a sum of Rs.15,000/- towards loss of estate. The amounts awarded by the Tribunal towards transportation charges is just and reasonable and hence, the same is 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	10,71,000/-	17,13,600/-	Enhanced
2.	Loss of love and affection	20,000/-	80,000/-	Enhanced
3.	Funeral expenses	25,000/-	15,000/-	Reduced
4.	Transportation charges	5,000/-	5,000/-	Confirmed
5.	Loss of estate	-	15,000/-	Granted
	Total	11,21,000/-	18,28,600	Enhanced by Rs.7,07,600/-

9. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.11,21,000/- is enhanced to Rs.18,28,600/- along with interest and costs. The 2nd respondent-Insurance Company is directed to deposit the enhanced 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. 5812 of 2014. On such deposit, the appellants are permitted to withdraw their respective share of the enhanced award amount, 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 appellants are directed to pay the court fee, if any, on the enhanced amount of Rs.7,07,600/-. No costs.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

gsa
To

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

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

+1 CC to Mrs. Elveera Ravindran, Advocate sr 16063.

+1 CC to Mr.N.M.Elumalai, Advocate sr 15564.

C.M.A. No. 1706 of 2017

BR(CO)
SP(19/08/2020)

WEB COPY