IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.233 of 2017

1.Rajeswari
2.Priya
3.Devaraj .. Appellants

Vs.

1.S.Arumugham
2.New India Assurance Company Limited,
No.45, 2nd Line Beach, Moore Street,
Chennai 600 001. .. Respondents
(R1 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 07.02.2011 made in M.C.O.P.No.1777 of 2007 on the file of the Motor Accident Claims Tribunal, the learned Chief Judge, Court of Small Causes, Chennai.

For Appellants : M/s.Ramya V Rao

For Respondents: Mr.G.Udaya Sankar for R2
No Appearance for R1
Notice serve set exparte

J U D G M E N T

This Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 07.02.2011 made in M.C.O.P.No.1777 of 2007 on the file of the Motor Accident Claims Tribunal, the learned Chief Judge, Court of Small Causes, Chennai.

2.The appellants are the claimants in M.C.O.P.No.1777 of 2007 on the file of the Motor Accident Claims Tribunal, the learned Chief judge, Court of Small Causes, Chennai. They filed the above said claim petition, claiming a sum of Rs.20,00,000/- as compensation for the death of one Babu, who died in the accident that took place on 05.03.2007.

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

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to the first respondent and directed the second respondent, as insurer of the vehicle to pay a sum of Rs.9,60,000/- as compensation to the appellants.

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.The learned counsel appearing for the appellants contended that the deceased was a proprietor of Deva cycles and was earning a sum of Rs.10,000/- per month. The Tribunal without considering the documents filed and marked as Exs.P4 to P12, has fixed a sum of Rs.1,00,000/- per annum as the income of the deceased and after deducting 1/3rd towards personal expenses of the deceased, granted a sum of Rs.9,33,324/- as compensation towards loss of dependency and the same is meagre. The deceased was aged 48 years at the time of accident. The Tribunal failed to grant any amount towards enhancement of future prospects. The amounts granted by the Tribunal under different heads are meagre and prayed for enhancement of the compensation.

6.Per contra, learned counsel appearing for the second respondent/ Insurance Company contended that the Tribunal considering the Income Tax returns marked as Ex.P12, has fixed a sum of Rs.1,00,000/- per annum as income of the deceased, which is excessive. The Tribunal after considering the materials available on record, has awarded just compensation. The appellants have not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

7.Heard learned counsel appearing for the appellants as well as the learned counsel appearing for the second respondent / Insurance Company and perused all the materials available on record.

8.From the materials on record it is the contention of the appellants that at the time of accident, the deceased was a proprietor of Deva cycles and was earning a sum of Rs.10,000/- per month. The 1st appellant, wife of the deceased has deposed to that effect as P.W.1. The Tribunal considering Ex.P12- Income Tax Saral, fixed the annual income of the deceased at Rs.1,00,000/-, which is correct. As per Exs.P8- PAN Card and P12-Income Tax Saral, it is evident that the deceased was aged 44 years at the time of accident. The Tribunal erred in not awarding any enhancement towards prospects. The appellants are entitled to 25% enhancement towards future prospects. There are three dependants of the deceased. Hence, deducting 1/3rd towards personal expenses of the deceased and applying the multiplier '14', the amount granted by the Tribunal towards loss of dependency is modified to Rs.11,66,667/- {[Rs.1,00,000/- +

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Rs.25,000/- (25% of Rs.1,00,000/-)] x 14 x 2/3}. The Tribunal has awarded meagre amounts towards funeral expenses, loss of consortium to the 1st appellant and loss of love and affection to the appellants 2 and 3. Hence, Rs.15,000/- is awarded towards funeral expenses, Rs.40,000/- towards loss of consortium to the 1st appellant and Rs.25,000/- each towards loss of love and affection to the 2nd and 3rd appellants. The Tribunal failed to grant any amount towards loss of estate. The appellants are entitled to a sum of Rs.15,000/- 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
1.	Loss of dependency	9,33,324/-	11,66,667/-	Enhanced
2.	Loss of consortium to the 1st appellant	10,000/-	40,000/-	Enhanced
3.	Loss of love and affection to the appellants 2 and 3 (each Rs.25,000/-)	10,000/-	50,000/-	Enhanced
4.	Funeral expenses	6,676/-	15,000/-	Enhanced
5.	Loss of estate	-	15,000/-	Granted
	Total	9,60,000/-	12,86,667/-	Enhanced by Rs.3,26,667/-

9.In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.9,60,000/- is hereby enhanced to Rs.12,86,667/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellants/claimants are directed to pay necessary Court fee, if any, on the enhanced 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. On such deposit, the appellants/claimants are permitted to withdraw their respective shares of the award amount along with proportionate interest and costs, as per the ratio of apportionment fixed by the Tribunal, after adjusting

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the amount, if any, already withdrawn, by filling necessary applications before the Tribunal. It is made clear that the appellants are not entitled for any interest for the delay period on the amount of Rs.3,26,667/-, enhanced by this Court as per the order of this Court dated 11.01.2017, made in M.P. No. 1 of 2013 in C.M.A. SR. No. 45211 of 2013. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

vkr
To

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

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

+1cc to Mr.G.Udhaya Sankar , Advocate SR.No. 1699

A.Sk(23.12.2020)

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