IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3105 of 2017

1.B.Kanagaraj
2.Minor Prithika
3.Minor Kesaviya
(Minors/appellants 2 & 3 rep. by their
next friend and father Kanagaraj) ... Appellants/Claimants

Vs.

1.Sri Senthur Velan Infras
SF 115/1, 2 Sathy main road
Near Annur market committee
Annur, Coimbatore-641 653.

2.The New India Assurance Co. Ltd.
Divisional Office
near bus stand, Erode. ... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 17.09.2016 made in M.C.O.P.No.114 of 2014 on the file of Motor Accident Claims Tribunal, Sub Court, Sathyamangalam.

For Appellants : Ms.M.Amuthini for
Mr.R.Nalliyappan

For R2 : Mr.J.Michael Visuvasam

J U D G M E N T

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 17.09.2016 made in M.C.O.P.No.114 of 2014 on the file of Motor Accident Claims Tribunal, Sub Court, Sathyamangalam.

2.The appellants are claimants in M.C.O.P.No.114 of 2014 on the file of Motor Accident Claims Tribunal, Sub Court, Sathyamangalam. The appellants filed the said claim petition claiming a sum of Rs.15,00,000/- as compensation for the death of one Renuga, who died in the accident that took place on 19.12.2013.

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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 1st respondent and directed both the 1st respondent as well as the 2nd respondent/Insurance Company being insurer of the said lorry to jointly and severally pay a sum of Rs.5,12,000/- 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/claimants contended that the deceased was aged 40 years at the time of accident and was earning a sum of Rs.7,500/- per month by doing agricultural, tailoring and handicraft works. The Tribunal without considering the same, fixed only a meagre sum of Rs.3,000/- per month as notional income of the deceased. The Tribunal has not awarded any compensation towards loss of estate. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the appellants have not produced any document to prove the avocation and income of the deceased. In the absence of any material evidence to prove the avocation and income of the deceased, the Tribunal has rightly fixed a sum of Rs.3,000/- per month as notional income of the deceased. The Tribunal after considering all the materials available on record in proper perspective, 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 the learned counsel appearing for the appellants as well as the 2nd respondent/Insurance Company and perused all the materials available on record.

8.It is the contention of the appellants that the deceased was earning a sum of Rs.7,500/- per month by doing agricultural, tailoring and handicraft works. They have failed to substantiate the said contention. In the absence of any material evidence to prove the avocation and income of the deceased, the Tribunal fixed a sum of Rs.3,000/- per month as notional income of the deceased. The accident is of the year 2013 and the notional income fixed by the Tribunal is meagre. Hence, a sum of Rs.7,500/- per month is fixed as notional income of the deceased. As per Ex.P7/post-mortem certificate, the deceased was

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aged 40 years at the time of accident. The Tribunal has not granted any enhancement towards future prospects. The appellants are entitled to 25% enhancement towards future prospects. By applying multiplier '15' and deducting 1/3rd towards personal expenses, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.11,25,000/- (Rs.7,500/- + 1875 [Rs.7,500/- + 25%] x 12 x 15 x 2/3). A sum of 1,00,000/- and Rs.25,000/- awarded by the Tribunal towards loss of love & affection to the appellants 2 & 3 & funeral expenses respectively are excessive and the same are hereby reduced to Rs.80,000/- and Rs.15,000/- respectively. A sum of Rs.25,000/- and Rs.2,000/- awarded by the Tribunal towards loss of consortium and transportation are meagre and the same are hereby enhanced to Rs.40,000/- and Rs.5,000/- respectively. The Tribunal has not awarded any compensation towards loss of estate and hence, a sum of Rs.15,000/- is awarded 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 or reduced
1.	Loss of dependency	3,60,000	11,25,000	Enhanced
2.	Loss of love and affection to the appellants 2 & 3	1,00,000	80,000	Reduced
3.	Loss of consortium	25,000	40,000	Enhanced
4.	Funeral expenses	25,000	15,000	Reduced
5.	Transportation	2,000	5,000	Enhanced
6.	Loss of estate	-	15,000	Granted
	Total	5,12,000	12,80,000	Enhanced by Rs.7,68,000/-

9.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.5,12,000/- is hereby enhanced to Rs.12,80,000/- together with

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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. It is made clear that the appellants/claimants shall not be entitled for any interest for the delay period on the amount of Rs.7,68,000/- enhanced by this Court as per the order of this Court dated 31.10.2017 made in C.M.P.No.17143 of 2017 in C.M.A.SR.No.71760 of 2017. Both the respondents are directed to jointly and severally 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 1st appellant is permitted to withdraw his share of the award amount as per the apportionment fixed by the Tribunal along with proportionate interest and costs, less the amount if any, already withdrawn. The shares of the minors/appellants 2 & 3 are directed to be deposited in any one of the Nationalised Banks till the minors attain majority. The 1st appellant being the father of the appellants 2 & 3/minors is permitted to withdraw the accrued interest once in three months for the welfare of the minors. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

kj
To

1.The Subordinate Judge,
The Motor Accident Claims Tribunal,
Sathyamangalam.

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

+1cc to M/s.R.Nalliyappan, Advocate Sr.9421
+1cc to M/s.J.Michael Visuvasam, Advocate Sr.9283

C.M.A.No.3105 of 2017

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