

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.688 of 2017

1.S.Sellammal

2.Vijaya

3.S.Chandrasekar

.. Appellants/Petitioners

Vs.

1.R.Raveendar

2.Bajaj Alliance General Insurance Company Limited,
Prince Towers, 4th Floor,
No.25 & 26, College Road,
Chennai - 600 006.

3.G.Vinoth Kumar

.. Respondents/Respondents

(R3 impleaded as per order dated
17.03.2014 in M.P.No.1893/2013)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 23.07.2014 made in M.C.O.P.No.473 of 2011 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai.

For Appellants : Ms.A.Subadra
for Ms.M.Malar

For R2 : Mr.T.K.Premkumar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 23.07.2014 made in M.C.O.P.No.473 of 2011 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai.

2.The appellants are the claimants in M.C.O.P.No.473 of 2011 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai. They filed the above said claim petition, claiming a sum of Rs.6,00,000/- as compensation for the death of one Subramani, who died in the accident that took place on 04.10.2008.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the rider of the motorcycle belonging to the third respondent and directed the second respondent-Insurance Company, being the insurer of the motorcycle to pay a sum of Rs.3,72,000/- as compensation to the appellants at the first instance and then recover the same from the respondents 1 and 3 being the owners of the motorcycle, on the ground that the third respondent/rider of the motorcycle was not possessing valid driving license at the time of accident.

4.Not being satisfied with the amounts awarded by the Tribunal, the appellants have come out with the present appeal.

5.The learned counsel appearing for the appellants contended that the deceased was working as Watchman and was earning a sum of Rs.5,000/- per month and also getting pension of Rs.1,642/- per month. The Tribunal fixed meagre sum of Rs.4,500/- per month as notional income of the deceased and granted only a sum of Rs.2,52,000/- towards pecuniary loss. The Tribunal has not granted any enhancement towards future prospects of the deceased, amounts towards mental agony, transportation, damages to clothes and loss of estate. The amounts awarded by the Tribunal towards loss of consortium, funeral expenses and loss of love and affection are meagre and prayed for enhancement of compensation.

6.Per contra, the learned counsel appearing for the second respondent-Insurance Company contended that the appellants have not produced any material evidence to prove that the deceased was earning a sum of Rs.5,000/- per month and also receiving pension of Rs.1,642/- per month. In the absence of any material evidence to prove the avocation and income of the deceased, a sum of Rs.4,500/- per month fixed by the Tribunal as notional income of the deceased is not meagre. The deceased was aged 70 years at the time of accident and the appellants are not entitled to any enhancement towards future prospects. The amounts awarded by the Tribunal under different heads are not meagre. The appellants have not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

7.Heard the learned counsel for the appellants as well as the learned counsel appearing for the second respondent and perused the entire materials on record.

8.It is the contention of the appellants that the deceased was working as Watchman and was earning a sum of Rs.5,000/- per month and also getting pension of Rs.1,642/- per month. They failed to prove the said contention. In the absence of any

material evidence with regard to avocation and income of the deceased, the Tribunal fixed a sum of Rs.4,500/- per month as notional income of the deceased. The accident occurred in the year 2008 and the notional income fixed by the Tribunal is meagre. Therefore, a sum of Rs.6,500/- per month is fixed as notional income of the deceased. The deceased was aged 65 years at the time of accident, which is evident from Ex.P9/copy of pension book and hence, the appellants are not entitled to any enhancement towards future prospects. The Tribunal rightly adopted multiplier '7' and deducted 1/3rd towards personal expenses of the deceased. In view of the above, the compensation awarded by the Tribunal towards pecuniary loss is modified to Rs.3,64,000/- {Rs.6,500/- X 12 X 7 X 2/3}. The Tribunal has awarded excessive amounts of Rs.20,000/- and Rs.50,000/- towards funeral expenses and loss of consortium and the same are reduced to Rs.15,000/- and Rs.40,000/- respectively. The Tribunal has not awarded any amount towards loss of estate. Therefore, a sum of Rs.15,000/- is awarded towards loss of estate. The compensation awarded by the Tribunal towards loss of love and affection 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.	Pecuniary loss	2,52,000/-	3,64,000/-	Enhanced
2.	Loss of consortium	50,000/-	40,000/-	Reduced
3.	Funeral expenses	20,000/-	15,000/-	Reduced
4.	Loss of love and affection	50,000/-	50,000/-	Confirmed
5.	Loss of estate	-	15,000/-	Granted
	Total	Rs.3,72,000/-	Rs.4,84,000/-	enhanced by Rs.1,12,000/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.3,72,000/- is hereby enhanced to Rs.4,84,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. 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 to the credit of M.C.O.P.No.473 of 2011 on the file of the Motor

Accident Claims Tribunal, II Small Causes Court, Chennai, at the first instance and then recover the same from the respondents 1 and 3. On such deposit, the appellants are permitted to withdraw their respective share of the enhanced award amount now determined by this Court, as per the ratio of apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. It is made clear that the appellants are not entitled for any interest for Rs.1,12,000/- the amount now enhanced by this Court, as per the order of this Court dated 03.02.2017 made in C.M.P.No.8846 of 2016 in C.M.A.SR.No.37020 of 2016. No costs.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

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

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

+1cc to Mr.TK.Premkumar, Advocate, S.R.No. 2448
+1cc to Mr.M.Malar, Advocate, S.R.No. 2528

C.M.A.No.688 of 2017

SSD(CO)
GN(15/12/2020)

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