

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.700 of 2017

R.Mallika

.. Appellant

Vs.

1.M/s.Rudra Transporting & Warehousing (P) Ltd.,
213, Maruti Chambers,
Kalamboll Pourer,
Raigend, Maharashtra - 402 309.

2.New India Assurance Co., Ltd.,
Motor Third Party Cell,
45, Moore Street, 5th Floor,
Chennai - 600 001.

.. Respondents

(The 1st respondent remained exparte before the
Trial Court hence dispensed with)

Prayer: This Civil Miscellaneous Appeal is filed under Section
173 of the Motor Vehicles Act, 1988, against the judgment and
decree dated 28.06.2016 made in M.C.O.P.No.3754 of 2009 on the
file of Motor Accident Claims Tribunal, Special Sub Court No.1,
Chennai.

For Appellant : Mr.T.Sezhian
For R2 : Mr.J.Chandran
R1 : Exparte

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
28.06.2016 made in M.C.O.P.No.3754 of 2009 on the file of Motor
Accident Claims Tribunal, Special Sub Court No.1, Chennai.

2.The appellant is claimant in M.C.O.P.No.3754 of 2009 on
the file of Motor Accident Claims Tribunal, Special Sub Court

No.1, Chennai. She filed the said claim petition claiming a sum of Rs.15,00,000/- as compensation for the death of one Rajesh, who died in the accident that took place on 09.12.2007.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the container lorry belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said container lorry to pay a sum of Rs.8,47,800/- as compensation to the appellant.

4.Not being satisfied with the amounts awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

5.The learned counsel appearing for the appellant/claimant contended that the Tribunal has awarded a sum of Rs.8,47,800/- as compensation to the appellant, which is meagre. The deceased was working as a lab technician and was earning a sum of Rs.10,000/- per month. The Tribunal has fixed a meagre sum of Rs.4,400/- as monthly income of the deceased. 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 Tribunal accepted Ex.P9/EPF statement of accounts produced by the appellant and fixed the monthly income of the deceased at Rs.4,400/- and granted compensation under different heads, which are not meagre. The Tribunal after considering all the records in proper perspective, rightly awarded the compensation, which is not meagre. The appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

7.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 2nd respondent/Insurance Company and perused all the materials available on record.

8.From the materials available on record, it is seen that the appellant has contended that the deceased was working as "lab technician and care taker" in AVM Medical ENT Research Foundation Pvt Ltd. and was earning a sum of Rs.10,000/- per month. The appellants have examined one Murugupandian, Accountant of AVM Medical ENT Research Foundation Pvt Ltd., as

P.W.3 and marked Ex.P7/salary certificate and Ex.P9/EPF statement to prove the income of the deceased. The Tribunal has fixed a sum of Rs.4,400/- per month as notional income of the deceased by accepting Ex.P9. The accident is of the year 2007 and a sum of Rs.4,400/- per month fixed by the Tribunal as notional income of the deceased is meagre. Hence, a sum of Rs.6,000/- per month is fixed as the notional income of the deceased. The contention of the learned counsel appearing for the 2nd respondent that the Tribunal has awarded 50% enhancement towards future prospects contrary to the judgment of the Hon'ble Apex Court, has considerable force. The appellant is entitled to only 40% enhancement towards future prospects. The deceased was aged 24 years at the time of the accident and he died as a Bachelor. Hence, the Tribunal applied the multiplier '18' and deducted 1/2 towards personal expenses of the deceased. In view of the same, the amount granted by the Tribunal towards loss of income is modified to Rs.9,07,200/- [(Rs.6,000/- + 2,400 (Rs.6,000/ of 40%) x 12 x 18 x 1/2)]. The amount awarded by the Tribunal towards funeral & ritual expenses is excessive and the same is reduced to Rs.15,000/-. A sum of Rs.10,000/- awarded by the Tribunal towards loss of estate is meagre and the same is enhanced to Rs.15,000/-. The amount awarded by the Tribunal towards loss of love & 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 or reduced
1.	Loss of dependency	7,12,800	9,07,200	Enhanced
2.	Loss of love and affection	1,00,000	1,00,000	Confirmed
3.	Funeral and ritual expenses	25,000	15,000	Reduced
4.	Loss of estate	10,000	15,000	Enhanced
	Total	Rs.8,47,800/-	Rs.10,37,200/-	Enhanced by Rs.1,89,400/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at

Rs.8,47,800/- is hereby enhanced to Rs.10,37,200/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant/claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. The 2nd 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 appellant/claimant is permitted to withdraw the award amount along with interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-
Asst.Registrar (CS II)

/true copy/
Sub Asst. Registrar

mtl

To
1.The Motor Accident Claims Tribunal
The Special Subordinate Judge No.1,
Chennai.

Copy to

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

+1 cc to Mr.J.Chandran Advocate sr1833
+1 cc to Mr.R.Meenal Advocate sr1610

C.M.A.No.700 of 2017

WEB COPY

ssi(co)
aa15/12/2020