

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.866 of 2017

1.K.Balasundaram
2.K.Karunanithi
3.D.Bharathi

..Appellants/Petitioners

Vs.

1.M/s.Chandrakant & Co,
No.7C, Madurai Road,
Trichy, Srirangam 620 008.

2.Bajaj Allianz General Insurance Co. Ltd.,
No.25/26, Prince Tower,
Ground Floor,
College Road,
Nungambakkam, Chennai 6.

..Respondents

(1st respondent 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 20.12.2013 made in M.C.O.P.No.1196 of 2010 on the file of the Motor Accident Claims Tribunal/Chief Small Causes Court, Chennai.

For Appellants : Mr.K.Varadha kamaraj
For Respondents : M/s.K.Poomalai for R2
R1 : No such Address

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 20.12.2013 made in M.C.O.P.No.1196 of 2010 on the file of the Motor Accident Claims Tribunal/Chief Small Causes Court, Chennai.

2.The appellants are the claimants in M.C.O.P.No.1196 of 2010 on the file of the Motor Accident Claims Tribunal/Chief 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 Ranganayaki who died in the accident that took place on 23.02.2010.

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 van bearing Registration No.TN 45 AF 5114 belonging to the first respondent and directed the second respondent, as insurer of the vehicle to pay a sum of Rs.3,64,000/- as compensation to the appellants at the first instance and recover the same from the owner of the vehicle, the first respondent herein.

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 working as a coolie and was earning a sum of Rs.6,000/- per month. The Tribunal without considering the evidence of P.W.1 and P.W.3, fixed a meagre sum of Rs.4,500/- as monthly income of the deceased. The Tribunal failed to award any enhancement towards future prospects and the amounts awarded by the Tribunal under different heads are also meagre and prayed for enhancement of compensation.

6.Per contra, learned counsel appearing for the second respondent/ Insurance Company contended that the appellants have not produced any document to prove that the deceased was earning a sum of Rs.6,000/- per month. In the absence of any material evidence with regard to income of the deceased, the Tribunal has fixed a sum of Rs.4,500/- per month as notional income of the deceased and the same is not meagre. The deceased was aged 60 years at the time of the accident and hence, the appellants are not entitled to any enhancement towards future prospects. 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 the entire materials available on record.

8.From the materials available on record, it is seen that the appellants have contended that the deceased was working as a coolie and was earning a sum of Rs.6,000/- per month. The appellants have not substantiated the said contention by marking any document. In the absence of any material evidence to prove the avocation and income of the deceased, the Tribunal has fixed a sum of Rs.4,500/- per month as notional income of the deceased. The accident is of the year 2010 and the monthly income fixed by the Tribunal is meagre. A sum of Rs.6,000/- is

fixed as monthly income of the deceased. The deceased was aged 60 years at the time of the accident and hence, the appellants are entitled for 10% enhancement towards future prospects. Since there are three dependents, the Tribunal has rightly deducted $\frac{1}{3}$ rd towards the personal expenses of the deceased. By applying multiplier '9', the amount granted by the Tribunal towards loss of dependency is modified to Rs.4,75,200/- [Rs.6,000/- +Rs.600/- (Rs.6,000/-x 10%) X 12 x 9 x $\frac{2}{3}$]. A sum of Rs.25,000/- awarded by the Tribunal towards loss of love & affection to the appellants 1 to 3 is meagre and hence, a sum of Rs.25,000/- each is granted towards loss of love & affection to the appellants 1 to 3. The amount awarded by the Tribunal towards funeral expenses is also meagre and hence, the same is enhanced to Rs.15,000/-. The Tribunal has not awarded any compensation towards loss of estate and therefore, a sum of Rs.15,000/- is granted towards loss of estate. The amount awarded by the Tribunal towards transportation 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
1.	Loss of dependency	3,24,000	4,75,200	Enhanced
2.	Loss of love & affection and	25,000	75,000	Enhanced
3.	Transportation	5,000	5,000	Confirmed
4.	Funeral expenses	10,000	15,000	Enhanced
5.	Loss of estate	-	15,000	Granted
	Total	Rs.3,64,000/-	Rs.5,85,200/-	Enhanced by Rs.2,21,200/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.3,64,000/- is hereby enhanced to Rs.5,85,200/- 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 Comapany Corporation is directed to deposit the award amount with interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment, at the first instance and recover the same from the first respondent/owner of the vehicle. On such deposit, the appellants are permitted to withdraw their respective share of the enhanced award amount on the basis of apportionment fixed by the Tribunal along with proportionate interest and costs, less the amount if any, already withdrawn by filing necessary applications before the Tribunal. No costs.

Sd/-
Assistant Registrar(CS I)

//True Copy//

Sub Assistant Registrar

vkr

To

- 1.The Chief Small Causes Court,
The Motor Accident Claims Tribunal,
Chennai.
- 2.The Section Officer,
V.R Section,
High Court, Madras.

+lcc to Mr.K.Poomalai, Advocate, S.R.No.3132

+lcc to Mr.V.Mohan Choudary, Advocate, S.R.No.2580

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C.M.A.No.866 of 2017

JP (CO)
KKV/28/08/2020

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