

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No. 870 of 2017

1.M. Kumutha
2.M. Prethepan Chakaravarthy
3.M. Vinodhan Chakaravarthy .. Appellants/Petitioners

Vs.

1.T. Mallikarjuna Roa
2.The New India Assurance Co. Ltd.,
No. 45, 5th Floor (T.P. Cell), Moore Street,
Chennai 1. .. Respondents/Respondents

[1st respondent set exparte before the Tribunal. Hence he is dispensed with.]

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 30.11.2011, made in M.C.O.P. No. 10 of 2010, on the file of the Sub Court, (Motor Accident Claims Tribunal), Tiruttani.

For Appellants : Mr. K.R. Ponnusamy
for M/s. Anand and Suryas

For Respondents: Mr. J. Chandran (for R2)

J U D G M E N T

This appeal has been filed for enhancement of the compensation granted by the award dated 30.11.2011, made in M.C.O.P. No. 10 of 2010, on the file of the Sub Court, (Motor Accident Claims Tribunal), Tiruttani.

2.The appellants-claimants filed M.C.O.P. No. 10 of 2010, on the file of the Sub Court, (Motor Accident Claims Tribunal), Tiruttani, claiming a sum of Rs.20,00,000/- as compensation for the death of one M. Mani, who died in the accident that took place on 24.03.2006.

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 TATA Sumo Car belonging to the 1st respondent and directed the respondents jointly and severally to pay a sum of Rs.16,11,200/- as compensation to the appellants.

4.Not being satisfied with the amounts awarded by the Tribunal in the award dated 30.11.2011, made in M.C.O.P. No. 10 of 2010, the appellants have come out with the present appeal.

5.Learned counsel appearing for the appellants contended that the deceased was working as Assistant, Grade - II in Food Corporation of India, Arakkonam, Vellore District and was earning a sum of Rs.17,471/- per month. The Tribunal has fixed a meagre sum of Rs.17,400/- as the monthly income. The Tribunal has not granted any enhancement towards future prospects of the deceased. The amounts awarded by the Tribunal under the head, loss of love and affection to the children of the deceased viz., the appellants 2 and 3 and the 1st appellant, wife of the deceased are meagre and prayed for enhancement of the compensation.

6.Learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal considering all the materials on record, especially the salary certificate of the deceased for the month of March, 2006, marked as Ex.P11, awarded compensation under the head, loss of dependency by fixing a sum of Rs.17,400/- as the monthly income of the deceased. The amounts awarded under different heads are not meagre. The appellants have not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

7.Heard learned counsel appearing for the appellants as well as the 2nd respondent and perused the materials available on record.

8.It is the contention of the appellants that the deceased was working as Assistant, Grade - II, in Food Corporation of India and was earning a sum of Rs.17,471/- per month. The Tribunal erroneously fixed a sum of Rs.17,400/- per month as the income of the deceased. Considering all the materials on record, a sum of Rs.17,500/- per month is fixed as income of the deceased. The deceased was aged 52 years at the time of accident. The Tribunal has not granted any enhancement towards future prospects. The appellants are entitled to 15% enhancement towards future prospects. Hence, the monthly income of the deceased is arrived at Rs.20,125/- [Rs.17,500/- + Rs.2,625/- (15% of Rs.17,500/-)]. The correct multiplier applicable is '11'.

Considering the age and avocation of the deceased, it is appropriate to apply the 'split multiplier' method to arrive at the compensation towards loss of dependency. There are three dependants of the deceased. After deducting $1/3^{\text{rd}}$ towards the personal expenses of the deceased, the compensation towards loss of dependency is arrived at Rs.15,29,500/- $[(\text{Rs.}20,125/- \times 12 \times 8 \times 2/3) + (\{\text{Rs.}20,125/-\}/2 \times 12 \times 3 \times 2/3)]$. The Tribunal has awarded meagre amount towards loss of consortium to the 1st appellant, wife of the deceased and loss of love and affection to the appellants 2 and 3, children of the deceased. The 1st appellant is entitled to a sum of Rs.40,000/- towards loss of consortium and the appellants 2 and 3 are each entitled to a sum of Rs.40,000/- towards loss of love and affection. The amount awarded by the Tribunal towards funeral expenses is meagre. The appellants are entitled to a sum of Rs.15,000/- towards funeral expenses. The Tribunal has not awarded 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	15,31,200/-	15,29,500/-	Reduced
2.	Loss of consortium to the 1 st appellant	30,000/-	40,000/-	Enhanced
3.	Loss of love and affection to the appellants 2 & 3	40,000/-	80,000/-	Enhanced
4.	Funeral expenses	10,000/-	15,000/-	Enhanced
5.	Loss of estate	-	15,000/-	Granted
	Total	16,11,200/-	16,79,500/-	Enhanced by Rs.68,300/-

9. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.16,11,200/- is enhanced to Rs.16,79,500/- along with interest and costs. The respondents are jointly and severally directed to deposit the enhanced award

amount along with interest and costs, now determined by this Court, 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. 10 of 2010. On such deposit, the appellants are permitted to withdraw their share of the award amount, along with proportionate interest and costs, as per the ratio of apportionment fixed by the Tribunal, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The appellants are directed to pay the court fee, if any, on the enhanced amount of Rs.68,300/-. It is made clear that the appellants are not entitled for any interest for the delay period on the amount of Rs.68,300/-, enhanced by this Court as per the order of this Court dated 12.10.2015, made in M.P. No. 1 of 2015 in C.M.A. SR. 42452 of 2014. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

gsa
To

The Subordinate Judge,
(Motor Accident Claims Tribunal),
Tiruttani.

Copy to

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

+1 CC to Mr.J. Chandran, Advocate sr 5782.

+1 CC to M/s. Anand and Surya, Advocate sr 5249.

C.M.A. No. 870 of 2017

BS(CO)
SP(03/09/2020)

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