

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No. 970 of 2017

Thirugnana Achari ... Appellant/Claimant

Vs.

1.R. Saravanan

2.Future General India Insurance Co. Ltd.,
1st Floor, North Wing, Karumuthu Nilayam,
No. 192, Anna Salai,
Chennai 2. ... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 07.10.2014, made in M.C.O.P. No. 942 of 2012, on the file of the III Additional District Court, (Motor Accident Claims Tribunal), Poonamallee.

For Appellant : Mr. K. Varadhakamaraj

For Respondents : M/s. N. Vijayarashna (for R2)

R1 : Exparte in Lower Court

J U D G M E N T

This appeal has been filed for enhancement of the compensation granted by the award dated 07.10.2014, made in M.C.O.P. No. 942 of 2012, on the file of the III Additional District Court, (Motor Accident Claims Tribunal), Poonamallee.

2.The appellant-claimant filed M.C.O.P. No. 942 of 2012, on the file of the III Additional District Court, (Motor Accident Claims Tribunal), Poonamallee, claiming a sum of Rs.5,00,000/- as compensation for the death of one T. Baskar, who died in the accident that took place on 24.08.2012.

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 belonging to the 1st respondent and directed the 2nd respondent as insurer of the vehicle to pay a sum of Rs.1,15,000/- as compensation to the appellant.

4. Not being satisfied with the amounts awarded by the Tribunal in the award dated 07.10.2014, made in M.C.O.P. No. 942 of 2012, the appellant has come out with the present appeal.

5. Learned counsel appearing for the appellant contended that the deceased was aged 35 years at the time of accident and was doing Carpenter work and earning a sum of Rs.10,000/- per month. The Tribunal ought to have awarded just compensation considering the educational qualification and future prospects of the deceased. The Tribunal has awarded only a total sum of Rs.1,15,000/-, under the heads, pain and suffering and funeral expenses. The Tribunal ought to have awarded compensation under different heads and prayed for enhancement of the compensation.

6. Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that in the absence of any material evidence to prove the avocation and income of the deceased, the Tribunal has awarded a total sum of Rs.1,00,000/- towards pain and suffering and Rs.15,000/- towards funeral expenses. The same is not meagre. The appellant has not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

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

8. It is the contention of the appellant that at the time of accident, the deceased was a bachelor, aged 35 years and was doing Carpenter work and earning a sum of Rs.10,000/- per month. He has failed to substantiate the said contention. The Tribunal has not awarded any amount towards loss of dependency. The accident is of the year 2012. In the absence of any material evidence to prove the avocation and income of the deceased, a sum of Rs.6,000/- per month is fixed as the notional income of the deceased. The Tribunal has held that as per the evidence of P.W.1, the deceased was aged 29 years at the time of accident. Hence, the appellant is entitled to 40% enhancement towards future prospects and the multiplier applicable is '17'. Since the deceased was a bachelor at the time of accident, after deducting 1/2 towards personal expenses of the deceased, a sum of Rs.8,56,800/- {[Rs.6,000/- + Rs.2,400/- (40% of Rs.6,000/-)]

x 12 x 17 x 1/2} is awarded towards loss of dependency. The Tribunal has erroneously awarded a lumpsum amount of Rs.1,00,000/- towards pain and suffering and the same is set aside. The Tribunal has not awarded any amount towards loss of love and affection and loss of estate. The appellant who has lost his son, is entitled to a sum of Rs.40,000/- towards loss of love and affection and Rs.15,000/- towards loss of estate. The amount awarded by the Tribunal under the head funeral expenses is just and reasonable and hence, the same is confirmed.

9.It is well settled that the Tribunal and the Courts have to award just compensation. Though the claimants have claimed lesser compensation, the Courts have power to grant just compensation more than the amount claimed by the claimants. 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.	Pain and suffering	1,00,000/-	-	Set aside
2.	Funeral expenses	15,000/-	15,000/-	Confirmed
3.	Loss of dependency	-	8,56,800/-	Granted
4.	Loss of estate	-	15,000/-	Granted
5.	Loss of love and affection	-	40,000/-	Granted
	Total	1,15,000/-	9,26,800/-	Enhanced by Rs.8,11,800 /-

10.In the result, the appeal is allowed and the amount awarded by the Tribunal at Rs.1,15,000/- is enhanced to Rs.9,26,800/- along with interest and costs. The 2nd respondent-Insurance Company is directed to deposit the enhanced award amount, now determined by this Court, along with interest and costs, 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. 942 of 2012. On such deposit, the appellant is permitted to withdraw

the enhanced award amount, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The appellant is directed to pay the court fee, if any, on the enhanced amount of Rs.8,11,800/-. No costs.

Sd/-
Assistant Registrar

//True Copy//

To Sub Assistant Registrar

1.The III Additional District Judge,
(Motor Accident Claims Tribunal),
Poonamallee.

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

+1cc to Mr.K.Varadhakamaraj, Advocate Sr.11281

+1cc to Mr.N.Vijayaraghavan, Advocate Sr.3151

C.M.A. No. 970 of 2017

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