IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.12.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2731 of 2009

1.G.R.Nivetharani

2.R.Megala @ Mahalakshmi

3.G.Aranibai .. Appellants/Petitioners

(appellants 1 and 2 declared as major and their grandmother 3rd appellant discharged from the guardianship vide order of this Court dated 20.01.2020 made in C.M.P.No.20924 & 20930, 20927 & 20929 of 2019)

Vs.

1.M/s.Indev Trans, Samy Complex,
No.81/41, Thambu Chetty Street,
Chennai 600 001.

2.M/s.The New India Assurance
Company Limited,
C/o.Motor Third Party Claims Offices,
No.45, Moore Street,
Chennai 600 001. .. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 08.09.2008 made in M.C.O.P.No.269 of 2007 on the file of the Motor Accident Claims Tribunal, Fast Track Court No.IV, Poonamallee.

For Appellant : Mr.T.G.Balachandran
For Respondents : Mrs.R.Sreevidhya for R2
R1- Exparte

J U D G M E N T

The Civil Miscellaneous Appeal is filed by the appellants/claimants against the award dated 08.09.2008 made in M.C.O.P.No.269 of 2007 on the file of the Motor Accident Claims Tribunal, Fast Track Court No.IV, Poonamallee.

2.The appellants are claimants in M.C.O.P.No.269 of 2007 on the file of the Motor Accident Claims Tribunal, Fast Track Court No.IV, Poonamallee. They filed the said claim petition claiming a sum of Rs.30,00,000/- as compensation for the death of one Ravindran, who died in the accident that took place on 15.08.2009.

3.The Tribunal after considering the oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the lorry belonging to the 1st respondent, insured with the 2nd respondent and directed the respondents 1 and 2 to jointly and severally pay a sum of Rs.15,50,000/- as compensation to the appellants.

4.Not satisfied with the amounts awarded by the Tribunal, the appellants have come out with the present appeal for enhancement of compensation.

5.The learned counsel appearing for the appellants/claimants contended that at the time of accident, the deceased was aged 39 years, working as a skilled worker in Ashok Leyland Company and was earning a sum of Rs.20,313/-. The Tribunal ought to have fixed a sum of Rs.12,000/- per month as notional income of the deceased taking into consideration the future prospects of the deceased. The Tribunal erred in deducting personal allowances after deducting 1/3rd of the salary towards personal expenses. The Tribunal has not granted any amount towards pain and sufferings and loss of expectation of life. The amounts awarded by the Tribunal under the heads loss of love and affection and funeral expenses 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 after considering all the materials available on record, awarded compensation, which is 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 appearing for the appellants 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 it is the case of the appellants that at the time of accident, the deceased was aged 39 years, working in Ashok Leyland Company as a skilled worker and was earning a sum of Rs.20,313/- per month. To substantiate the same, the appellants have produced and marked the salary certificate as Exs.P6 and P9. From Exs.P6 & P9, it is seen that the deceased was earning a gross salary of Rs.20,313.95/-including allowances. The Tribunal considering Exs.P6 and P9/Salary Certificates deducted a sum of Rs.6,909/- and fixed monthly income of the deceased at Rs.12,000/-. From the award of the Tribunal, it is seen that the Tribunal deducted night shift allowance, 6th day allowance, conveyance allowance, incentive bonus, washing allowance, motor vehicle allowance and medical reimbursement amount, totally a sum of Rs.6,909/- holding that these allowances are given to the deceased for his personal benefits. The deduction of night shift allowance, 6th day allowance and incentive bonus are not correct. These allowances are earned by the deceased for the benefit of the family and the appellants are entitled to the said amounts. While calculating the compensation for loss of dependency, the conveyance allowance, washing allowance and motor vehicle allowance alone are personal allowances granted to the deceased. In view of the same, the income of the deceased is fixed as Rs.19,543/- [Rs.20,313 - Rs.770/-(Rs.420/- + Rs.300/- + Rs.50/-)]. After deducting these allowances, a sum of Rs.19,543/-, rounded off to Rs.19,550/- is fixed as monthly income of the deceased. As per Ex.P4/Post-mortem certificate and Ex.P7/Driving license, the deceased was aged 39 years at the time of accident. The Tribunal has not granted any amount towards future prospects. As per the judgment of the Hon'ble Apex Court reported in 2017 (2) TNMAC 609 (SC) [National Insurance Co. Ltd. v. Pranay Sethi and others], the appellants are entitled to 50% enhancement towards future prospects. Hence, the annual income of the deceased comes to Rs.3,51,900/- {[Rs.19,550/- + Rs.9,775/- (50% of Rs.19,550/-)] x 12}. During the financial year 2009-2010, upto Rs.1,60,000/- there is nil tax.

Income Tax Slab for financial year 2009-2010

Upto Rs.1,60,000/-	...	Nil
From Rs.1,60,000/- to Rs.3,00,000/-, 10%		
Taxable Income is (Rs.3,51,900 – Rs.1,60,000/-)	...	Rs.1,91,900/-
10% on Rs.1,91,900/-	...	Rs. 19,190/-
Annual Income after deducting income tax (Rs.3,51,900 – 19,190)	...	Rs.3,32,710/-

The deceased was aged 39 years at the time of accident. The Tribunal applied multiplier '16', which is not correct. As per the judgment of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC Supreme Court (Sarla Verma vs. Delhi Transport Corporation), the correct multiplier applicable is '15'. There are three dependents of the deceased. After deducting 1/3rd towards personal expenses of the deceased, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.33,27,100/- [Rs.3,32,710/- X 15 X 2/3). The Tribunal has awarded Rs.4,000/- and Rs.10,000/- towards funeral expenses and loss of love and affection to the appellants respectively, which are meagre and hence, the same are hereby enhanced to Rs.15,000/- towards funeral expenses and Rs.20,000/- each towards loss of love and affection. The Tribunal has not awarded any compensation towards loss of estate and hence, a sum of Rs.15,000/- is awarded towards loss of estate.

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 or reduced
1.	Loss of dependency	15,36,000	33,27,100	Enhanced
2.	Loss of love and affection to the appellants (each Rs.20,000/-)	10,000	60,000	Enhanced
3.	Funeral expenses	4,000	15,000	Enhanced
4.	Loss of estate	-	15,000	Granted
	Total	15,50,000	34,17,100	Enhanced by Rs.18,67,100/-

10.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.15,50,000/- is hereby enhanced to Rs.34,17,100/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellants are directed to pay necessary Court fee, if any, on the enhanced compensation. The respondents 1 and 2, owner and insurer of the lorry are jointly and severally directed to deposit the 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 appellants are permitted to withdraw their respective share of the award amount, as per the apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn, by filing necessary petitions before the Tribunal. No costs.

Sd/-

Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

Vkr

To

1.The IV Judge,
Fast Track Court No.IV,
Motor Accidents Claims Tribunal,
Poonamallee.

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

+1cc to Mr.T.G.Balachandran, Advocate SR.No.62721
+1cc to Mr.R.Sreevidhya, Advocate SR.No.63094

C.M.A.No.2731 of 2009

CP(CO)
GN(24/01/2022)