IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.1869 of 2016

1. Manju Jain
2. Krishnakanth Jain
3. Sanjeev Kumar Jain
4. Praveen Kumar Jain
5. Puvindar Singh Jain .. Appellants

Vs.

1. K.Paneer Selvam
2. United India Insurance Company,
   No.19, Andiappa Gramani Street,
   Royapuram, Chennai - 13. .. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 seeking to set aside the judgment and decree dated 19.01.2009, made in M.C.O.P.No.796 of 2004, on the file of the Motor Accidents Claims Tribunal, V Small Causes Court, Chennai.

For Appellants : Mrs.Ramya Rao
for Mr.M.Kother Adam

For Respondent 2 : Mr.J.Chandran

J U D G M E N T

(The case has been heard through video conference)

This appeal has been filed by the claimants seeking enhancement of compensation under the impugned Award dated 19.01.2009, passed by the Motor Accidents Claims Tribunal, V Small Causes Court, Chennai, in M.C.O.P.No.796 of 2004.

2. The appellants/claimants not satisfied with the quantum of compensation awarded by the Tribunal has preferred this appeal seeking for enhancement. The details of the compensation awarded by the Tribunal under the impugned Award are as follows:

Sl.No.	Heads	Amount in Rs.
1.	Loss of income	3,52,000
2.	Love and Affection	25,000
3.	Funeral expenses	5,000
	Total	3,82,000

3. The deceased Pawan Kumar Jain aged 55 years was a business partner at M/s.Usha Kiran Enterprises. In the claim petition filed by the appellants/claimants, they have pleaded that the deceased was earning Rs.9,000/- per month at the time of the accident which happened on 25.05.2003. The Tribunal has fixed the annual income of the deceased at Rs.48,000/-. But as seen from the income tax returns which were marked as Ex.P8, before the Tribunal, the deceased was earning Rs.64,000/- per annum. Therefore, this Court is of the considered view that the Tribunal ought to have taken into consideration the income tax returns of the deceased which discloses that the deceased was earning Rs.64,000/- per annum. Accordingly, this Court enhances the annual income of the deceased at Rs.64,000/- instead of Rs.48,000/- erroneously fixed by the Tribunal. The Tribunal has correctly applied 11 multiplier since the deceased was aged 55 years at the time of the accident, which is confirmed by this Court. Since the annual income of the deceased is enhanced to Rs.64,000/- from Rs.48,000/- the compensation towards loss of income is fixed at Rs.5,12,000/- (Rs.64,000 x 12 x 2/3) by this Court instead of Rs.3,52,000/- erroneously fixed by the Tribunal.

4. The Tribunal has failed to award any compensation towards loss of consortium to the first appellant / first claimant who is the wife of the deceased. In accordance with the settled law, this Court awards compensation of Rs.40,000/- towards loss of consortium to the first appellant / first claimant. The Tribunal has also erroneously awarded lesser compensation towards loss of love and affection to the children of the deceased. Since the deceased was having four children who are all married at the time when the claim petition was filed, this Court is of the considered view that instead of Rs.25,000/- erroneously fixed by the Tribunal towards loss of love and affection, this Court enhances the same to Rs.1,00,000/-. The Tribunal has also erroneously awarded lesser compensation

towards funeral expenses at Rs.5,000/-, which has to be enhanced to Rs.15,000/- in accordance with the settled law. The Tribunal has failed to award any compensation towards loss of estate, which the appellants/claimants are legally entitled to. In accordance to the settled law, this Court fixes the compensation towards loss of estate at Rs.15,000/-.

5. For the foregoing reasons, the compensation awarded by the Tribunal under the impugned Award is enhanced to Rs.6,82,000/- instead of Rs.3,82,000/- erroneously fixed by the Tribunal. The details of the compensation now awarded by this Court is detailed hereunder:

Sl. No.	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or set aside or granted or reduced (Rs.)
1.	Loss of income	3,52,000	5,12,000	Enhanced
2.	Love and Affection	25,000	1,00,000	Enhanced
3.	Funeral expenses	5,000	15,000	Enhanced
4.	Loss of Consortium	---	40,000	Awarded
5.	Loss of Estate	---	15,000	Awarded
	Total	3,82,000	6,82,000	Enhanced by Rs.3,00,000/-

6. In the result, the Civil Miscellaneous Appeal is partly allowed and the compensation of Rs.3,82,000/- awarded by the Tribunal is hereby enhanced to Rs.6,82,000/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. It is made clear that since there is delay on the part of the appellants/claimants in preferring the appeal as against the impugned order and the said delay is 1430 days, the appellants/claimants are not entitled for any interest for the said delay period. The second 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 four weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.796 of 2009, on the file of the Motor Accidents Claims Tribunal, V Small Causes Court, Chennai. On such deposit, the appellants/ claimants are permitted to withdraw the award amount now determined by this Court, along with interest and costs, less the amount, if any, already withdrawn by making necessary application before the

Tribunal. The appellants/claimants are directed to pay necessary Court fee, if any, on the enhanced compensation now determined by this Court. No costs.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal,
   V Small Causes Court, Chennai

+2ccs to Mrs.Ramya V.Rao, Advocate, S.R.No.58456

+1cc to Mr.J.Chandran, Advocate, S.R.No.55744

C.M.A.No.1869 of 2016

KG(CO)
SU(25/11/2021)