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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.03.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.515 of 2021

1.Palaniammal

2.Janakaraj

.. Appellants/Petitioners

Vs.

1.R.K.Prema

2.The Divisional Manager,

M/s.National Insurance Company Ltd.,

No.74 A,

Paramathi Road,

Namakkal- 637 001.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 07.02.2020, made in M.C.O.P. No.553 of 2018, on the file of the Additional District Court (FAC), (Motor Accident Claims Tribunal), Namakkal.

For Appellants : Mr.A.Sathish Kumar
for M/s.C.Thangaraju

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

J U D G M E N T

(The matter is heard through Video Conferencing/Hybrid mode)
This Civil Miscellaneous Appeal has been filed seeking enhancement of the compensation granted by the Tribunal in the award dated 07.02.2020, made in M.C.O.P. No.553 of 2018, on the file of the Additional District Court (FAC), (Motor Accident Claims Tribunal), Namakkal.



2.The appellants filed M.C.O.P. No.553 of 2018, on the file of the Additional District Court (FAC), (Motor Accident Claims Tribunal), Namakkal, claiming a sum of Rs.10,00,000/- as compensation for the death of one Ponnusamy, who died in the accident that took place on 05.05.2015.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by driver of the Bus belonging to the 1st respondent and directed the 2nd respondent as insurer of the vehicle to pay a sum of Rs.5,18,000/- as compensation to the appellants at the first instance and recover the same from the 1st respondent.

4.Not being satisfied with the amounts granted by the Tribunal in the award dated 07.02.2020, made in M.C.O.P. No.553 of 2018, the appellants have come out with the present appeal.

5.The learned counsel appearing for the appellants contended that at the time of accident, the deceased was aged 63 years, working as a Coolie and was earning a sum of Rs.15,000/- per month. The Tribunal fixed a meagre sum of Rs.8,000/- per month, deducted 1/3rd towards personal expenses, applied multiplier '7' and awarded compensation towards loss of dependency. The Tribunal failed to award any amount for loss of love and affection to the 2nd appellant. The total compensation awarded by the Tribunal under different heads are meagre 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 proof by the appellants for the avocation and income of the deceased, the Tribunal erroneously fixed a sum of Rs.8,000/- per month as notional income. The total compensation granted by the Tribunal is not meagre. The appellants have not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

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

8.It is the case of the appellants that at the time of accident, the deceased was working as a Coolie and was earning a sum of Rs.15,000/- per month. They failed to prove the same. In the absence of any evidence by the appellants, the Tribunal fixed a sum of Rs.8,000/- per month as notional income of the deceased. The accident is of the year 2015. The monthly income



fixed by the Tribunal is meagre. Considering the year of accident and nature of work done by the deceased, a sum of Rs.10,000/- per month is fixed as notional income of the deceased. There are two dependants of the deceased. The Tribunal considering the post mortem certificate marked as Ex.P6, rightly fixed the age of the deceased as 61 years, applied multiplier '7' and deducted 1/3rd towards personal expenses of the deceased. Thus, by fixing Rs.10,000/- per month as notional income of the deceased, the amounts awarded by the Tribunal towards loss of dependency is modified to Rs.5,60,000/- [Rs.10,000/- x 12 x 7 x 2/3]. The Tribunal failed to grant any amount for transport expenses. The appellants are entitled to a sum of Rs.10,000/- towards transport expenses. The amounts granted by the Tribunal under other conventional heads are just and reasonable and hence, the same are 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	4,47,972/-	5,60,000/-	Enhanced
2.	Funeral expenses	15,000/-	15,000/-	Confirmed
3.	Loss of consortium to 1 st appellant	40,000/-	40,000/-	Confirmed
4.	Transportation	-	10,000/-	Granted
5.	Loss of estate	15,000/-	15,000/-	Confirmed
	Total	5,17,972/- rounded off to 5,18,000/-	6,40,000/-	Enhanced by Rs.1,22,000/-

9. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.5,18,000/- is enhanced to Rs.6,40,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd respondent-Insurance Company is directed to deposit the 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.553 of 2018 at the first instance and recover the same from the 1st respondent. On such deposit, the appellants are permitted to withdraw their share of the award amount, now determined by this



Court, 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. No costs.

Sd/-

Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

gsa

To

1.The Additional District Judge,
Fast Track Court,
(Motor Accident Claims Tribunal),
Namakkal.

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

+1cc to Mr.J.Chandran, Advocate, S.R.No.15673

+3cc to Mr.C.Thangaraju, Advocate, S.R.No.15661 & 15989

C.M.A.No.515 of 2021

PA(CO)

CB(01/10/2021)