IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.12.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.649 of 2016

1.Surpanangai

2.K.Srinivasan

3.Poonkodi

4.Sarala

5.K.Padmanabhan .. Appellants/Petitioners

Vs.

1.M/s. Cholan Tours Pvt Ltd,
No.4, Annai Avenue,
Vasanth Nagar Extension,
Kollidakarai Srirangam,
Trichy.
(R1 remained exparte before Tribunal.
Hence, notice to R1 dispensed with)

2.United India Insurance Company Limited,
No.134, Greams Road,
Chennai - 600 006. .. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 30.01.2015 made in M.C.O.P.No.7816 of 2013 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai.

For Appellants : Mrs.Subadra
for Ms.M.Malar

For R2 : Mr.P.Sankaranarayanan

R1 : Exparte

J U D G M E N T

(The matter is heard through "Video Conferencing/Hybrid mode".)

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the Tribunal in the award dated 30.01.2015 made in M.C.O.P.No.7816 of 2013 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai.

2.The appellants are the claimants in M.C.O.P.No.7816 of 2013 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai. They filed the above said claim petition, claiming a sum of Rs.15,00,000/- as compensation for the death of one V.Kuppusamy, who died in the accident that took place on 27.08.2013

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 bus belonging to 1st respondent and directed the 2nd respondent-Insurance Company to pay a sum of Rs.2,60,000/- as compensation to the appellants at the first instance and recover the same from the 1st respondent – owner of the bus.

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

5.The learned counsel appearing for the appellants contended that at the time of accident, the deceased was running a Provision Store and was earning a sum of Rs.15,000/- per month. But, the Tribunal has fixed a meagre sum of Rs.4,000/- per month as notional income of the deceased. The deceased was aged 58 years at the time of accident but the Tribunal fixed the age of the deceased at 60 years and erroneously applied multiplier '5' and awarded meagre amount as compensation towards loss of dependency. The Tribunal has not granted any enhancement towards future prospects. There are five dependants of the deceased and the Tribunal ought not to have deducted 1/3rd towards personal expenses of the deceased. The amounts awarded by the Tribunal towards loss of consortium to 1st appellant, funeral expenses and loss of love and affection awarded to the appellants are meagre. The Tribunal has not awarded any amount towards loss of estate and prayed for enhancement of compensation.

6.Per contra, learned counsel appearing for the 2nd respondent-Insurance Company contended that the appellants failed to prove the avocation and income of the deceased by acceptable evidence. In the absence of any acceptable evidence, a sum of Rs.4,000/- per month fixed by the Tribunal as notional income of the deceased is not meagre. The appellants have not filed any document to prove the age of the deceased. The Tribunal has fixed the age of the deceased at 60 years as per Ex.P2/Postmortem certificate and Ex.P3/death report and rightly applied multiplier '5' and awarded just compensation towards loss of dependency. The Tribunal considering the entire materials on record, has awarded a sum of Rs.2,60,000/- as compensation to the appellants and the same is not meagre. The appellants have not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

7.The 1st respondent remained exparte before the Tribunal and hence, notice to the 1st respondent is dispensed with.

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

9.It is the case of the appellants that at the time of accident the deceased was running a Provision Store and was earning a sum of Rs.15,000/- per month. But, the appellants have not produced any documentary evidence to prove the avocation and income of the deceased. In the absence of any material evidence to prove the avocation and income of the deceased, the Tribunal fixed a sum of Rs.4,000/- per month as notional income of the deceased. The accident is of the year 2013 and 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.8,000/- per month is fixed as notional income of the deceased. It is the further case of the appellants that the deceased was aged 58 years at the time of accident. But, the appellants have not produced any documents to prove the age of the deceased. As per Ex.P2/Postmortem Certificate and Ex.P3/Death Report, the deceased was aged 60 years at the time of accident. Hence, the Tribunal rightly fixed the age of the deceased as 60 years as per Exs.P2 & P3. Having fixed the age of the deceased at 60 years, the Tribunal erroneously applied multiplier '5' 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 & others Vs. Delhi Transport Corporation & another] the correct multiplier applicable is '9'. The Tribunal has not granted any enhancement towards future prospects. As per the judgment of the Hon'ble Apex Court reported in 2017 (2)

TNMAC 609 (SC), [National Insurance Company Limited Vs. Pranay Sethi and others], the appellants are entitled to 10% enhancement towards future prospects. The dependants are five in numbers and the Tribunal has erroneously deducted 1/3rd towards personal expenses instead of deducting 1/4th. Thus, by fixing a sum of Rs.8,000/- as monthly income, granting 10% enhancement towards future prospects, applying multiplier '9' and deducting 1/4th towards personal expenses, the compensation awarded by the Tribunal towards pecuniary loss is modified to Rs.7,12,800/- {Rs.8,800/- [Rs.8,000/- + Rs.800/- (10% of Rs.8,000/-)] X 12 X 9 X ¾ }. The amount awarded by the Tribunal towards loss of consortium to 1st appellant is meagre and hence, the same is enhanced to Rs.40,000/-. The amounts awarded by the Tribunal towards funeral expenses and loss of love and affection to appellants 2 to 5 are just and reasonable and hence, the same are hereby confirmed. 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.	Pecuniary loss	1,60,000/-	7,12,800/-	Enhanced
2.	Loss of consortium to 1st appellant	25,000/-	40,000/-	Enhanced
3.	Loss of love and affection to appellants 2 to 5	60,000/-	60,000/-	Confirmed
4.	Funeral expenses	15,000/-	15,000/-	Confirmed
5.	Loss of estate	-	15,000/-	Granted
	Total	Rs.2,60,000/-	Rs.8,42,800/-	Enhanced by Rs.5,82,800/-

11.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,60,000/- is hereby enhanced to Rs.8,42,800/- 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, less the amount already deposited, if any, 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.7816 of 2013 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai, at the first instance and recover the same from the 1st respondent – owner of the bus. On such deposit, the appellants are permitted to withdraw their respective share of the award amount now determined by this Court, as per the ratio of apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. No costs.

Sd/-

Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

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To

1.Motor Accident Claims Tribunal,
The III Judge,
III Small Causes Court,
Chennai.

Copy To

The Section Officer,
VR Section,
High Court,
Madras.

+1cc to Mr.M.Malar, Advocate SR.No.69486
+1cc to Mr.P.Sankaranarayanan, Advocate SR.No.22

C.M.A.No.649 of 2016

VBM(CO)
GN(15/03/2022)