



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.03.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1031 of 2021

1.V.Elizabeth

2.Amulraj

3.Kalpana

4.Velammal

5.H.Prabavathi

..Appellants/Petitioners

Vs.

1. Gurubakkiyam

2. Royal Sundaram General Insurance Company Limited,

3, Club House Road, Third Party Cell,

Anna Salai, Chennai - 600 002.

..Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 29.09.2020 made in M.C.O.P. No.1519 of 2019, on the file of the Chief Court of Small Causes, (Motor Accidents Claims Tribunal), at Chennai.

For Appellant : Mr.K.Varadhakamaraj

For Respondents : Mr.G.Vasudevan (For R2)

R1 : Exparte

J U D G M E N T

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

This appeal has been filed for enhancement of the compensation granted by the Tribunal in the award dated 29.09.2020 made in M.C.O.P. No.1519 of 2019, on the file of the Chief Court of Small Causes, (Motor Accidents Claims Tribunal), at Chennai.



2.The appellants/claimants filed M.C.O.P.No.1519 of 2019, on the file of the Chief Court of Small Causes, (Motor Accidents Claims Tribunal), at Chennai, claiming a sum of Rs.10,00,000/- as compensation for the death of one G.Samandhi who died in the accident that took place on 08.02.2019.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that accident occurred due to rash and negligent driving by driver of the Car owned by 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 appellants.

4.Not being satisfied with the amounts awarded by the Tribunal in the award dated 29.09.2020 made in M.C.O.P. No.1519 of 2019, the appellants have come out with the present appeal.

5.The learned counsel appearing for the appellants submitted that the Tribunal erred in not awarding any amount towards pecuniary loss or loss of income of the deceased on the ground that the appellants are not dependents of the deceased G.Samandhi, which is against the rulings of the Hon'ble Apex Court. The Tribunal failed to award any amount towards loss of estate. The total compensation granted by the Tribunal is meagre and prayed for enhancement of the compensation.

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

7.From the materials on record, it is seen that the Tribunal erroneously failed to grant any amount towards loss of dependency on the ground that the appellants who are adult children of the deceased are not dependents of the deceased. It is well settled that even married daughter, son and sisters are also dependents of the deceased. In view of the same, they are entitled for compensation towards loss of dependency. It is the case of the appellants that at the time of accident, the deceased G.Samandhi was aged 73 years, running Bunk Shop and was earning a sum of Rs.700/- per day. They did not file any document to prove the same. The accident is of the year 2019. The cost of living has increased enormously and salary of even unskilled workers has increased substantially. In the absence of any evidence to prove the avocation and income, considering the year of accident, age and nature of work done by the deceased, a sum of Rs.13,000/- per month is fixed as notional income of the deceased. The deceased was aged 73 years at the time of accident. 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 '5'. There are five dependents of the deceased and 1/4th has to be deducted towards personal expenses of the deceased. Hence, fixing the monthly income at Rs.13,000/-, applying multiplier '5' and after deducting 1/4th towards personal expenses of the deceased, a sum of Rs.5,85,000/- {Rs.13,000/- x 12 x 5 x $\frac{3}{4}$ } is awarded towards loss of dependency. The Tribunal failed to award any amount towards loss of estate. The appellants are entitled to a sum of Rs.15,000/- towards loss of estate. This Court is of the considered view that the amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are hereby confirmed.

8.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.	Loss of dependency	-	5,85,000/-	Granted
2.	Funeral expenses	15,000/-	15,000/-	Confirmed
3.	Loss of love and affection	1,00,000/-	1,00,000/-	Confirmed
4.	Loss of estate	-	15,000/-	Granted
	Total	1,15,000/-	7,15,000/-	Enhanced by Rs.6,00,000/-

9.In the result, the appeal is allowed and the amount awarded by the Tribunal at Rs.1,15,000/- is enhanced to Rs.7,15,000/- 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 eight weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P. No.1519 of 2019. 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, after adjusting the amount, if any already withdrawn, by filing necessary



applications before the Tribunal. The appellants are directed to pay the necessary court fee on the enhanced award amount. No costs.

WEB COPY

Sd/-
Assistant Registrar(SSA)

//True Copy//

Sub Assistant Registrar

gsa

To

1. The Chief Judge,
Court of Small Causes,
(Motor Accidents Claims Tribunal),
Chennai.
2. The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.G.Vasudevan, Advocate, S.R.No.20383

+1cc to Mr.K.Vardhakamaraj, Advocate, S.R.No.20276

C.M.A.No.1031 of 2021

VBM(CO)
RGA(25/10/2021)