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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2021

CORAM:

THE HONOURABLE TMT.JUSTICE S.KANNAMMAL

C.M.A.No.850 of 2020

1.R.Manikandan

2.Kala .. Appellants/Petitioners

Vs.

1.K.Govindarajan

2.The Divisional Manager,
The New India Assurance Company Limited,
Do, 1 Bharathi Road,
Cuddalore - 607 001.

3.K.Mary

4.The Divisional Manager,
The New India Assurance Company Limited,
Do, 1 Bharathi Road,
Cuddalore - 607 001. .. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 15.11.2019 made in M.C.O.P.No.571 of 2014, on the file of the Motor Accidents Claims Tribunal, Special Sub Court (FAC), Cuddalore.

For Appellants : Ms.Ramya V.Rao
for Mr.A.N.Viswanatha Rao

For RR 2 & 4 : Ms.Saraswathi

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 15.11.2019 made in M.C.O.P.No.571 of 2014, on the file of the Motor Accidents Claims Tribunal, Special Sub Court (FAC), Cuddalore.

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2.The appellants are the claimants in M.C.O.P.No.571 of 2014, on the file of the Motor Accidents Claims Tribunal, Special Sub Court (FAC), Cuddalore. The claimants filed the above said claim petition, claiming a sum of Rs.15,00,000/- as compensation for the death of their daughter viz., Nithya Priya @ Vidhya Priya, who died in the accident that took place on 30.12.2013.

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 Mini Bus belonging to 1st respondent and directed the 2nd respondent to pay a sum of Rs.8,46,635/- as compensation to the appellants at the first instance and recover the same from the 1st respondent and dismissed the claim petition as against the respondents 3 & 4.

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 aged 19 years, was working as Tea Leaf Plucker in Waterfall Private Limited, Tea Estate, Valparai and was earning a sum of Rs.15,000/- per month. But, the Tribunal erroneously fixed a meagre sum of Rs.6,000/- per month as notional income of the deceased and awarded compensation. The Tribunal ought to have fixed a sum of Rs.15,000/- per month as notional income of the deceased and awarded compensation for loss of dependency. The Tribunal has not awarded any amount towards loss of love and affection and prayed for enhancement of compensation.

6.Per contra, learned counsel appearing for the 2nd respondent contended that the claimants have not produced any document to prove the avocation and income of the deceased. In the absence of any material evidence with regard to avocation and income, a sum of Rs.6,000/- per month fixed by the Tribunal as notional income of the deceased is not meagre. The Tribunal has erroneously awarded a sum of Rs.40,000/- towards loss of consortium to the claimants who are the parents of the deceased for which they are not entitled to. In view of the same, the appellants are not entitled to any amount towards loss of love and affection. The Tribunal considering the entire materials on record, has awarded a sum of Rs.8,46,635/- 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.Heard the learned counsel appearing for the appellants as

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well as the learned counsel appearing for the respondents 2 & 4 and perused the entire materials on record.

8.From the materials available on record, it is seen that at the time of accident the deceased was aged 19 years, was working as Tea Leaf Plucker in Waterfall Private Limited, Tea Estate, Valparai and was earning a sum of Rs.15,000/- per month. Except oral evidence, the claimants have not produced any material evidence to prove the avocation and income of the deceased. In the absence of any material evidence with regard to avocation and income of the deceased, the Tribunal considering the year of accident and nature of work done by the deceased, fixed a sum of Rs.6,000/- per month as notional income of the deceased. The accident is of the year 2013 and the notional income fixed by the Tribunal is meagre. Considering the year of accident, age and nature of work done by the deceased, a sum of Rs.10,000/- per month is fixed as notional income of the deceased. As per Ex.P9/Postmortem Certificate, the deceased was aged 19 years at the time of accident. The Tribunal following the judgments of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC Supreme Court, [Sarla Verma & others Vs. Delhi Transport Corporation & another] and 2017 (2) TNMAC 609 (SC), [National Insurance Company Limited Vs. Pranay Sethi and others] rightly applied multiplier '18' and granted 40% enhancement towards future prospects. But, while calculating the compensation for loss of dependency, the Tribunal erroneously taken multiplier '15' and awarded compensation for loss of dependency. Thus, by fixing a sum of Rs.10,000/- per month as notional income and applying multiplier '18', the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.15,12,000/- {Rs.14,000/- [Rs.10,000/- + Rs.4,000/- (40% of Rs.10,000/-)] X 12 X 18 X ½}. The Tribunal has awarded a sum of Rs.40,000/- towards loss of consortium to the appellants, who are the parents of the deceased for which they are not entitled to. In view of the same, the compensation awarded by the Tribunal towards loss of consortium is liable to be set aside and it is hereby set aside. The Tribunal has not awarded any amount towards loss of love and affection. The appellants, being the parents of the deceased are entitled to a sum of Rs.40,000/- each towards loss of love and affection. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are hereby confirmed.

9.It is well settled that the Tribunal and the Courts have to award just compensation. Though the claimant has 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

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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	7,56,000/-	15,12,000/-	Enhanced
2.	Loss of consortium	40,000/-	-	Set aside
3.	Funeral expenses	15,000/-	15,000/-	Confirmed
4.	Loss of estate	15,000/-	15,000/-	Confirmed
5.	Medical Bills	2,635/-	2,635/-	Confirmed
6.	Ambulance Bill	18,000/-	18,000/-	Confirmed
7.	Loss of love and affection	-	80,000/-	Granted
	Total	Rs.8,46,635/-	Rs.16,42,635/-	Enhanced by Rs.7,96,000/-

10.In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.8,46,635/- is hereby enhanced to Rs.16,42,635/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd respondent 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.571 of 2014, on the file of the Motor Accidents Claims Tribunal, Special Sub Court (FAC), Cuddalore, at the first instance and recover the same from the 1st respondent. 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. The respondents 2 and 4 are same party, to which both the vehicles belonging to 1st respondent and 3rd respondent are insured with. The negligence is fixed on the driver of the mini bus belonging to 1st respondent and hence, the 2nd respondent being the insurer of the mini bus belonging to 1st respondent is liable to pay the compensation to the appellants. Since, no negligence is fixed on the part of the driver of the 3rd respondent's vehicle, to that part, the 4th respondent-Insurance Company is not liable to pay any compensation. Hence, this appeal is dismissed as against the

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respondents 3 and 4. The appellants are directed to pay the necessary Court fee on the enhanced amount of compensation now determined by this Court. No costs.

Sd/-

Assistant Registrar (CS-I)

//True Copy//

Sub Assistant Registrar

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To

1.The Special Subordinate Judge (FAC),
Motor Accident Claims Tribunal,
Cuddalore.

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

+1cc to Mr.A.N.Viswanatha Rao, Advocate, S.R.No.29915(17/09/21)

C.M.A.No.850 of 2020

PP(CO)
GN(16/09/2021)

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