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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.763 of 2021

1.Jaya

2.Minor.Nirmalkumar

(Rep by his next friend/guardian/mother Jaya) .. Appellants

Vs.

1.S.C.Murugesan

2.United India Insurance Company Limited,
Tiruchengode Branch, Tiruchengode,
Namakkal District.

3.Parvathi

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 27.11.2020 made in M.C.O.P.No.33 of 2012, on the file of the Sub Court, (Motor Accidents Claims Tribunal), Tiruchengode.

For Appellants : Mr.T.S.Arthanareeswaran
for Mr.C.Paraneedharan

For Respondent : Mrs.I.Malar (For R2)

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 27.11.2020 made in M.C.O.P.No.33 of 2012, on the file of the Sub Court, (Motor Accidents Claims Tribunal), Tiruchengode.

2.The appellants-claimants, filed M.C.O.P.No.33 of 2012, on the file of the Sub Court, (Motor Accidents Claims Tribunal),



Tiruchengode, claiming a sum of Rs.5,00,000/- as compensation for the death of one Nareshkumar who died in the accident that took place on 31.12.2003. The mother of the deceased was impleaded as 3rd respondent in the claim petition.

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3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the 1st respondent, driver-cum-owner of the Car and directed the 2nd respondent as insurer of the said Car to pay a sum of Rs.8,31,600/- as compensation to the appellants.

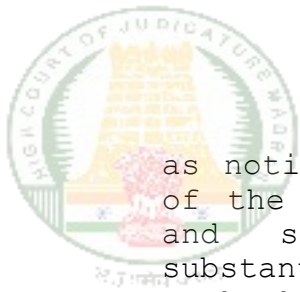
4.Not being satisfied with the amounts awarded by the Tribunal in the award dated 27.11.2020 made in M.C.O.P.No.33 of 2012, the appellants have come out with the present appeal.

5.The learned counsel appearing for the appellants contended that at the time of accident, the deceased Nareshkumar was aged 27 years, working as a Contract Labour on weekly basis in Sheshayee Paper Mill, Pallipalayam and was earning a sum of Rs.5,500/- per month. The deceased Nareshkumar was the sole bread winner of the family. The Tribunal has awarded only meagre amount towards loss of income. The Tribunal failed to grant any amount towards loss of parental consortium and filial consortium to the 3rd respondent who is the mother and 2nd appellant, who is the son of the deceased Nareshkumar. The total compensation awarded by the Tribunal is 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 evidence by the appellants to prove the avocation and income of the deceased Nareshkumar, the Tribunal fixed a sum of Rs.4,000/- per month as notional income and the same is excessive. The total compensation awarded 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.

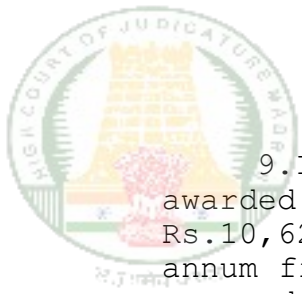
7.Heard the learned counsel appearing for the appellants as well as the 2nd respondent-Insurance Company and perused the materials available on record.

8.It is the case of the appellants that at the time of accident, the deceased Nareshkumar was working as a Contract Labour on weekly basis at Sesayee Paper Mill, Pallipalayam and was earning a sum of Rs.5,500/- per month. They did not file any document to prove the same. In the absence of any evidence by the appellants, the Tribunal fixed a sum of Rs.4,000/- per month



as notional income of the deceased Nareshkumar. The accident is of the year 2003. The cost of living has increased enormously and salary of even unskilled workers has increased substantially. Considering the year of accident and nature of work done by the deceased, the notional income fixed by the Tribunal is enhanced to Rs.5,000/- per month. Considering the post mortem certificate marked as Ex.P2, the Tribunal rightly fixed the age of the deceased as 27 years, granted 40% enhancement towards future prospects, applied the multiplier '17' and deducted 1/3rd towards personal expenses of the deceased. Hence, by fixing the monthly income at Rs.5,000/-, granting 40% enhancement towards future prospects, applying the multiplier '17' and after deducting 1/3rd towards personal expenses of the deceased, the amounts granted by the Tribunal towards loss of income is modified to Rs.9,52,000/- {[Rs.5,000/- + Rs.2,000/- (40% of Rs.5,000/-)] x 12 x 17 x 2/3}. The Tribunal failed to award any amount towards loss of love and affection to the 2nd appellant who is the son of the deceased Nareshkumar. Hence, a sum of Rs.40,000/- is awarded towards loss of love and affection to the 2nd appellant. 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. 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 income	7,61,600/-	9,52,000/-	Enhanced
2.	Loss of consortium to 1 st appellant	40,000/-	40,000/-	Confirmed
3.	Loss of love and affection to 2 nd appellant	-	40,000/-	Granted
4.	Loss of estate	15,000/-	15,000/-	Confirmed
5.	Funeral expenses	15,000/-	15,000/-	Confirmed
	Total	8,31,600/-	10,62,000/-	Enhanced by Rs.2,30,400/-



9. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.8,31,600/- is enhanced to Rs.10,62,000/- 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.33 of 2012. On such deposit, the 1st appellant and 3rd respondent 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. The share of the minor 2nd appellant is directed to be deposited in any one of the Nationalized Bank, till the minor attains majority. The 1st appellant, mother of the minor 2nd appellant is permitted to withdraw the accrued interest, once in three months for the welfare of the minor 2nd appellant. No costs.

Sd/-
Deputy Registrar (Accounts)

//True Copy//

Sub Assistant Registrar

gsa

To

1. The Subordinate Judge,
(Motor Accident Claims Tribunal),
Tiruchengode.

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

+2ccs to Mr.T.S.Arthanareeswaran, Advocate Sr No.17462

+1cc to M/s.I.Malar, Advocate Sr No.17942

C.M.A.No.763 of 2021

GP (CO)
PR (20/10/2021)