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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.02.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2615 of 2019

1.R. Suguna

2.R. Mukesh

3.R. Sathiyavani

.. Appellants/Claimants

Vs.

1.M. Murugan

(R1 remained exparte before the Tribunal)

2.Reliance General Insurance Co. Ltd.,

Rais Tower, 2nd Floor,

Flat No.2054, 2nd Avenue,

Anna Nagar,

Chennai 600 040.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 22.10.2018, made in M.C.O.P. No.688 of 2014, on the file of the Special Sub Court No.2, Small Causes Court, (Motor Accident Claims Tribunal), Chennai.

For Appellants : Mr.N.M.Elumalai

For Respondents: Mr.S.Arunkumar (For R2)

R1-Exparte

J U D G M E N T

This matter is heard through "Video Conferencing".

This Civil Miscellaneous Appeal has been filed for enhancement of the compensation granted by the Tribunal in the award dated 22.10.2018, made in M.C.O.P. No.688 of 2014, on the file of the Special Sub Court No.2, Small Causes Court, (Motor Accident Claims Tribunal), Chennai.



2.The appellants filed M.C.O.P. No.688 of 2014, on the file of the Special Sub Court No.2, Small Causes Court, (Motor Accident Claims Tribunal), Chennai, claiming a sum of Rs.25,00,000/- as compensation for the death of one Raja who died in the accident that took place on 14.11.2013.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that accident occurred due to rash and negligent driving by the driver of the TATA Ace belonging to the 1st respondent and directed the 2nd respondent as insurer of the vehicle to pay a sum of Rs.8,44,400/- as compensation to the appellants.

4.Not being satisfied with the amounts granted by the award dated 22.10.2018, made in M.C.O.P. No.688 of 2014, 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 48 years and was a Vegetable Vendor, earning a sum of Rs.30,000/- per month. The appellants have produced Ex.P3 - post mortem report to prove the age of the deceased and Ex.P6 - rental agreement of the shop of the deceased to prove his avocation and income. The Tribunal without considering the evidence of 1st appellant/ wife of the deceased as P.W.1 and Exs.P3 & P6, erroneously fixed only a sum of Rs.8,000/- per month as notional income, fixed age of the deceased as 53 years, applied multiplier '11' as against the correct multiplier '13' and granted only 10% enhancement towards future prospects, instead of granting 25%. The Tribunal failed to award any amount towards loss of love and affection. The amount awarded by the Tribunal under other heads are also meagre and prayed for enhancement of the compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the appellants failed to prove the age of the deceased. In the absence of any material evidence, the tribunal considering the death certificate marked as Ex.P7 and the averments in the claim petition, rightly fixed the age of the deceased as 53 years. In the absence of any materials to prove the avocation and income of the deceased, the Tribunal fixed a sum of Rs.8,000/- per month as notional income, which is not meagre. The amounts awarded by the Tribunal under other heads are 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.From the materials on record, it is seen that it is the



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contention of the appellants that at the time of accident, the deceased was aged 48 years. However, the appellants have claimed in the claim petition that the deceased was aged 53 years. The Tribunal, considering the death certificate, marked as Ex.P7, issued by the Government Official based on the documents produced by the relative of the deceased, rightly fixed the age of the deceased as 53 years. The appellants contended that the deceased was a Vegetable Vendor and was earning a sum of Rs.30,000/- per month. They have marked Ex.P6 - rental agreement to prove the same. The Tribunal considering the unregistered rental agreement executed on 02.09.2002 for a period of 11 months and the date of accident viz., 14.11.2013, rightly rejected Ex.P6 on the ground that the unregistered rental agreement was not in force at the time of accident. In the absence of any materials to prove the avocation and income of the deceased, the Tribunal fixed a sum of Rs.8,000/- per month as notional income and the same is meagre. The accident is of the year 2013. 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. The Tribunal rightly granted 10% enhancement towards future prospects, applied the multiplier '11' and deducted $1/3^{\text{rd}}$ towards personal expenses of the deceased. Hence, the amounts awarded by the Tribunal towards loss of dependency is modified to Rs.9,68,000/- {[Rs.10,000/- + Rs.1,000/- (10% of Rs.10,000/-)] x 12 x 11 x $2/3$ }. The Tribunal failed to award any amount towards loss of love and affection. The appellants 2 and 3 being children of the deceased are entitled to a sum of Rs.40,000/- towards loss of love and affection. The amounts granted by the Tribunal under other 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	7,74,400/-	9,68,000/-	Enhanced
2.	Loss of estate	15,000/-	15,000/-	Confirmed
3.	Funeral expenses	15,000/-	15,000/-	Confirmed
4.	Loss of consortium to 1 st appellant	40,000/-	40,000/-	Confirmed



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5.	Loss of love and affection to appellants 2 and 3	-	40,000/-	Granted
	Total	8,44,400/-	10,78,000/-	Enhanced by Rs.2,33,600/-

9. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.8,44,400/- is enhanced to Rs.10,78,000/- 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.688 of 2014. 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/-

Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

gsa

To

1. The Special Subordinate Judge-II,
Small Causes Court,
(Motor Accident Claims Tribunal),
Chennai.

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

+1cc to Mr.N.M.Elumalai, Advocate, S.R.No.5987
+1cc to Mr.S.Arun kumar, Advocate, S.R.No.6155

C.M.A.No.2615 of 2019

AK-I (CO)
CB(02/09/2021)