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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.03.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.889 of 2021

1.R.Chinnammal

2.S.Puspha

...Appellants/Petitioners

Vs.

1. Amman Bus Service,
No.4/2, Gounder Complex,
Udayarpalayam,
Thammampatty Post,
Gangavalli Taluk,
Salem District 636 113.

2. New India Assurance Co. Ltd.,
2nd Floor, Sethu Krishna Trade Centre,
133/31-1, Trichy Main Road,
Gugai,
Salem 636 006.

...Respondents/ Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 07.01.2021, made in M.C.O.P. No.1868 of 2018, on the file of the Special District Court, (Motor Accident Claims Tribunal), Salem.

For Appellants : Mr.K.Suryanarayanan
for M/s.M.Mohamed Riyaz

For Respondents : Ms.A.Salomi (For R2)
for M/s.Ramesh Babu

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 award dated 07.01.2021,



made in M.C.O.P. No.1868 of 2018, on the file of the Special District Court, (Motor Accident Claims Tribunal), Salem.

2.The appellants filed M.C.O.P. No.1868 of 2018, on the file of the Special District Court, (Motor Accident Claims Tribunal), Salem, claiming a sum of Rs.20,00,000/- as compensation for the death of one Raman, who died in the accident that took place on 07.08.2018.

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 owned by the 1st respondent, directed the respondents as owner and insurer of the offending vehicle to jointly and severally pay a sum of Rs.3,10,000/- as compensation to the 1st appellant and dismissed the claim petition as against the 2nd appellant.

4.Not being satisfied with the amounts awarded by the Tribunal in the award dated 07.01.2021, made in M.C.O.P. No.1868 of 2018, the appellants have come out with the present appeal.

5.The learned counsel appearing for the appellants contended that the Tribunal failed to consider the judgment of the Hon'ble Apex Court in granting compensation for loss of dependency. The learned counsel appearing for the appellants contended that the deceased was aged 60 years at the time of accident. In Exs.P3 and P4 - post mortem certificate and death certificate, the age of the deceased was mentioned as 60 years. The Tribunal erroneously relied on Ex.P8- Aadhaar card of the 1st appellant and fixed the age of the deceased as 68 years. The correct age of the deceased is 60 years and the multiplier applicable is '9'. The learned counsel appearing for the appellants further contended that the deceased was working as a Coolie and was earning a sum of Rs.20,000/- per month. The Tribunal fixed only a meagre sum of Rs.6,000/- per month as notional income. The accident is of the year 2018. The Tribunal ought to have fixed the monthly income of the deceased, considering the date of accident and cost of living prevailing in the year 2018. 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 the Tribunal considering entire materials on record, rightly granted compensation to the 1st appellant and dismissed the claim petition as against the 2nd appellant, as she is not the legal heir of the deceased Raman. The amounts awarded by the Tribunal under different 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. It is the case of the appellants that at the time of accident, the deceased Raman was aged 60 years. They relied on Exs.P3 & P4 - post mortem certificate and death certificate respectively. In the post mortem certificate and death certificate, the age of the deceased was mentioned as 60 years. The Tribunal erroneously fixed the age of the deceased Raman as 68 years, taking into consideration the date of birth of his wife mentioned as 1950 in her Aadhaar card marked as Ex.P8. The appellants have not filed any document to prove the age of the deceased Raman. It is well settled that in the absence of any document with regard to age of the deceased, the age mentioned in the post mortem report has to be taken into consideration. Hence, the age of the deceased Raman is fixed as 60 years and 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 multiplier applicable is '9'. The appellants claimed that the deceased Raman was working as a Coolie and was earning a sum of Rs.20,000/- per month. They did not file any document and failed to prove the avocation and income of the deceased. In the absence of any evidence, the Tribunal fixed the notional income of the deceased as Rs.6,000/- per month. The accident is of the year 2018 and the monthly income fixed by the Tribunal is meagre. Considering the date of accident, nature of work done by the deceased, a sum of Rs.13,000/- per month is fixed as notional income of the deceased. Considering the age of the deceased as 60 years, as per the judgment of the Hon'ble Apex Court reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and others], the appellants are entitled to 10% enhancement towards future prospects of the deceased. Hence, granting 10% enhancement towards future prospects, applying multiplier '9' and after deducting 1/3rd towards personal expenses of the deceased, the appellants are entitled to a sum of Rs.10,29,600/- {[Rs.13,000/- + Rs.1,300/- (Rs.13,000/- x 10%)] x 12 x 9 x 2/3} towards loss of dependency. The Tribunal rightly dismissed the claim made by the 2nd appellant who is the brother's daughter of the deceased. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are confirmed.

9. 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	2,40,000/-	10,29,600/-	Enhanced
2.	Loss of consortium to 1 st appellant	40,000/-	40,000/-	Confirmed
3.	Loss of estate	15,000/-	15,000/-	Confirmed
4.	Funeral expenses	15,000/-	15,000/-	Confirmed
	Total	3,10,000/-	10,99,600/-	Enhanced by Rs.7,89,600/-

10. In the result, the appeal is allowed and the amount awarded by the Tribunal at Rs.3,10,000/- is enhanced to Rs.10,99,600/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The respondents are jointly and severally directed to deposit the award amount, now determined by this Court, along with interest and costs, less the amount already deposited, 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.1868 of 2018. On such deposit, the 1st appellant is permitted to withdraw the award amount now determined by this Court, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The 1st appellant is directed to pay the necessary court fee on the enhanced award amount. This Civil Miscellaneous Appeal is dismissed as against the 2nd appellant. No costs.

Sd/-
Assistant Registrar

True Copy//

Sub Assistant Registrar



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

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

+1cc to M/s.Ramesh Babu, Advocate, S.R.No.19044
+1cc to M/s.M.Mohamed Riyaz, Advocate, S.R.No.19099

C.M.A.No.889 of 2021

BR[co]
NSK 28/10/2021