

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.03.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1189 of 2021

1.M.Kasthuri

2.E.Muniyan

.. Appellants/Petitioner

Vs.

1.R.Parthasarathy

2.United India Insurance Company Limited,
Silingi Building, New No.134,
Old No.40-45, Greams Road,
Chennai - 600 006.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 18.09.2019 made in M.C.O.P. No.147 of 2018, on the file of the III Court of Small Causes, (Motor Accidents Claims Tribunal), Chennai.

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

For Respondents : Mr.D.Bhaskaran (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 18.09.2019 made in M.C.O.P. No.147 of 2018, on the file of the III Court of Small Causes, (Motor Accidents Claims Tribunal), Chennai.

2.By consent of the learned counsel appearing for the appellants as well as the 2nd respondent, the appeal is taken up for final disposal at the admission stage itself.

3.The appellants/claimants filed M.C.O.P.No.147 of 2018, on the file of the III Court of Small Causes, (Motor Accidents Claims Tribunal), Chennai, claiming a sum of Rs.50,00,000/- as compensation for the death of one M.Selvakumar who died in the accident that took place on 13.10.2017.

4.The Tribunal considering the pleadings, oral and documentary evidence, held that accident occurred due to rash and negligent driving by driver of the Lorry owned by the 1st respondent and directed the 2nd respondent as insurer of the vehicle to pay a sum of Rs.15,48,000/- as compensation to the appellants.

5.Not being satisfied with the amounts awarded by the Tribunal in the award dated 18.09.2019 made in M.C.O.P. No.147 of 2018, the appellants have come out with the present appeal.

6.The learned counsel appearing for the appellants submitted that as per Ex.P5, the deceased M.Selvakumar had a job offer for the post of Technical Assistant in SRM University. The Tribunal without considering the same, has erroneously fixed only a meagre sum of Rs.10,000/- per month as notional income of the deceased. Considering the accident of the year 2017, the Tribunal ought to have fixed the notional income of the deceased at Rs.15,000/- per month, following the decision of this Court in similar cases. The total compensation awarded by the Tribunal is meagre and prayed for enhancement of the compensation.

7.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company submitted that in the absence of any materials by the appellants to prove the avocation and income of the deceased, the Tribunal fixed a sum of Rs.10,000/- per month as notional income, which is not meagre. The total compensation granted 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.

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

9.It is the case of the appellants that at the time of accident, the deceased M.Selvakumar was aged 25 years, working as a Technical Assistant at SRM University, SRM Engineering College and was earning a sum of Rs.12,000/- per month. They marked the appointment order, provisional certificate and other mark sheets of the deceased as Exs.P5 to P8 respectively. On perusal of Ex.P5, it is seen that the deceased has been offered

consolidated monthly income of Rs.12,000/-. The appellants did not file any documents like joining letter, salary slip and bank account to prove that the deceased joined the said job and was earning Rs.12,000/- per month. In the absence of any evidence, the Tribunal fixed a sum of Rs.10,000/- per month as notional income of the deceased. The accident is of the year 2017. Though the appellants have claimed only a sum of Rs.12,000/- per month as income of the deceased, considering the year of accident, nature of work done by the deceased, it will be just to fix the notional income of the deceased at Rs.14,000/- per month. The Tribunal considering Exs.P7 and P8, copy of mark sheets, rightly fixed the age of the deceased as 26 years, granted 40% enhancement towards future prospects, applied the multiplier '17' and deducted 50% towards personal expenses of the deceased, as he was a Bachelor at the time of accident. Thus, fixing the monthly income at Rs.14,000/-, granting 40% enhancement towards future prospects, applying multiplier '17' and after deducting 1/2 towards personal expenses of the deceased, a sum of Rs.19,99,200/- $\{ [Rs.14,000/- + Rs.5,600/- (40\% \text{ of } Rs.14,000/-)] \times 12 \times 17 \times 1/2 \}$ is awarded towards loss of dependency. This Court is of the considered view that the amount 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 dependency	14,28,000/-	19,99,200/-	Enhanced
2.	Loss of estate and Funeral expenses	30,000/-	30,000/-	Confirmed
3.	Loss of love and affection	80,000/-	80,000/-	Confirmed
4.	Transportation	10,000/-	10,000/-	Confirmed
	Total	15,48,000/-	21,19,200/-	Enhanced by Rs.5,71,200/-

10. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.15,48,000/- is enhanced to Rs.21,19,200/- 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.147 of 2018. 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. No costs.

Sd/-

Assistant Registrar

//True copy//

Sub Assistant Registrar

gsa

To

1.The III Judge,
Court of Small Causes,
(Motor Accidents Claims Tribunal),
Chennai.

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

+2cc to Mr.A.N.Viswanatha Rao, Advocate SR.No.20645

C.M.A.No.1189 of 2021

VBM(CO)
GMY(13/07/2021)

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