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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.03.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1188 of 2021

1.Sundari

2.Anbalagan ... Appellants/Petitioners

Vs.

1.Sri Balaji & Co.,
No.34, Spartank road, Chetpat,
Chennai - 600 031.

2.National Insurance Company Limited,
Branch Office-1, LRN Colony,
Saradha College Road,
Salem - 7.

3.Viswanathan

4.ICCI Lombard General Insurance Company Limited,
Sornambigai Plaza, Omalur Main Road,
Salem - 4. ... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 19.03.2020 made in M.C.O.P. No.1885 of 2015, on the file of the I Additional District Court, (Motor Accidents Claims Tribunal), Salem.

For Appellant : Mr.R.Nalliyappan

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 19.03.2020 made in M.C.O.P. No.1885 of 2015, on the file of the I Additional District Court, (Motor Accidents Claims Tribunal), Vellore, Salem.



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.

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3.The appellants/claimants filed M.C.O.P.No.1885 of 2015, on the file of the I Additional District Court, (Motor Accidents Claims Tribunal), Vellore, Salem, claiming a sum of Rs.60,00,000/- as compensation for the death of one Prem Anand who died in the accident that took place on 21.12.2014.

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.20,35,600/- as compensation to the appellants.

5.Not being satisfied with the amounts awarded by the Tribunal in the award dated 19.03.2020 made in M.C.O.P. No.1885 of 2015, the appellants have come out with the present appeal.

6.The learned counsel appearing for the appellants contended that at the time of accident, the deceased Prem Anand was aged 20 years, studying III Year B.E. (EEE) and working in Sri Balaji Agencies at Chennai and earning a sum of Rs.18,000/- per month. The Tribunal erred in fixing only a meagre sum of Rs.13,000/- per month as notional income of the deceased Prem Anand. The Tribunal ought to have considered the educational qualification of the deceased and fixed the notional income at Rs.35,000/- per month. The amounts awarded by the Tribunal towards funeral expenses, loss of estate and loss of love and affection are meagre and prayed for enhancement of the compensation.

7.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal considering the fact that the deceased Prem Anand was a student, in the absence of any evidence to prove his avocation and income earned in part time, fixed a sum of Rs.13,000/- per month as notional income, which is not meagre. The appellants have not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

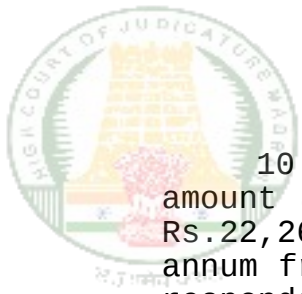
8.Heard the learned counsel appearing for the appellants as well as the 2nd respondent-Insurance Company and perused the materials available on record.



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9. It is the case of the appellants that the deceased Prem Anand was studying III year B.E (EEE) and was working in Sri Balaji Agencies, Chennai and was earning a sum of Rs.18,000/- per month. They filed mark sheet of the deceased to prove his educational qualification, but failed to prove his avocation and income by documentary evidence. In the absence of any evidence, the Tribunal fixed a sum of Rs.13,000/- per month as notional income of the deceased and granted 40% enhancement towards future prospects. The accident is of the year 2014. The monthly income fixed by the Tribunal is meagre. The cost of living has increased enormously and salary of even unskilled workers has increased substantially. Had the deceased completed his studies, he would have got decent job with good income. Hence, a sum of Rs.14,000/- per month is fixed as notional income of the deceased Prem Anand. The deceased was a Bachelor aged 19 years at the time of accident. The Tribunal rightly applied the multiplier '18 and deducted 50% towards personal expenses of the deceased. Thus, fixing the monthly income at Rs.14,000/-, granting 40% enhancement towards future prospects, applying multiplier '18' and after deducting 50% towards personal expenses of the deceased, the amount awarded by the Tribunal towards loss of income is enhanced to Rs.21,16,800/- {Rs.14,000/- + Rs.5,600/- (40% of Rs.14,000/-)} x 12 x 18 x ½}. The Tribunal has awarded a meagre sum of Rs.40,000/- towards loss of love and affection. The appellants who are the parents of the deceased are entitled to Rs.40,000/- each towards loss of love and affection. 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	19,65,600/-	21,16,800/-	Enhanced
2.	Funeral expenses	15,000/-	15,000/-	Confirmed
3.	Loss of love and affection	40,000/-	80,000/-	Enhanced
4.	Loss of estate	15,000/-	15,000/-	Confirmed
	Total	20,35,600/-	22,26,800/-	Enhanced by Rs.1,91,200/-



10. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.20,35,600/- is enhanced to Rs.22,26,800/- 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.1885 of 2015. 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. It is made clear that the appellants are not entitled for any interest on the enhanced award amount of Rs.1,91,200/- for the delay period viz., from 18.04.2017 to 29.01.2019 as held by the Tribunal. No costs.

SD/-

ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

gsa
To

1. The I Additional District Judge,
(Motor Accidents Claims Tribunal),
Salem.

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

C.M.A.No.1188 of 2021

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srg 25/11/2021