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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.12.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.536 of 2014

1.Andal

2.Karpagan

3.Selvi

4.S.Santhi

5.P.Sakthivel

6.V.Sathya

7.A.Priya

8.P.Baskar

.. Appellants/Petitioners

Vs.

1.J.Mohan Kumar

2.United India Insurance Company Limited,
No.38, Anna Salai,
Chennai - 600 002.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 18.11.2005 made in M.C.O.P.No.290 of 2004 on the file of the Motor Accident Claims Tribunal, IV Judge, Small Causes Court, Chennai.

For Appellants : Mr.F.Terry Challa Raja
for Ms.M.Malar

For R1 : Exparte

For R2 : Ms.B.Vijayakamala

J U D G M E N T

(The matter is heard through "Video Conferencing/Hybrid mode".)

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the Tribunal in the award



dated 18.11.2005 made in M.C.O.P.No.290 of 2004 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai.

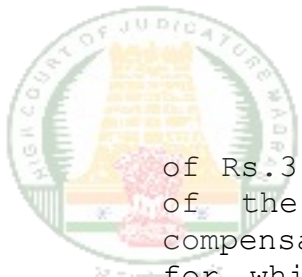
2.The appellants are the claimants in M.C.O.P.No.290 of 2004 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai. They filed the above said claim petition, claiming a sum of Rs.6,00,000/- as compensation for the death of one Baluchamy, who died in the accident that took place on 31.10.2003.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the rider of the motorcycle belonging to 1st respondent and directed the 2nd respondent-Insurance Company to pay a sum of Rs.2,15,730/- as compensation to the appellants.

4.Not being satisfied with the amounts awarded by the Tribunal, the appellants have come out with the present appeal seeking enhancement of compensation.

5.The learned counsel appearing for the appellants contended that the Tribunal failed to award adequate compensation for the death of one Baluchamy. The Tribunal failed to appreciate the oral and documentary evidence let in by the appellants. The deceased was aged 55 years at the time of accident and the appellants have produced Ex.P6/discharge summary and Ex.P7/Accident Register to that effect. The Tribunal has erroneously taken the age of the deceased as 62 years as per Ex.P2/postmortem certificate. The Tribunal without considering Exs.P6 & P7, erroneously relied on the age mentioned in Ex.P2/postmortem certificate and applied multiplier '5' taking into consideration the age of the deceased as 62 years. The deceased was working as Watchman at Nadumaran Housing Board and was earning a sum of Rs.5,000/- per month and the appellants have produced Ex.P5/pay certificate to that effect. The Tribunal has fixed a meagre sum of Rs.3,000/- per month as notional income of the deceased. There are eight dependants of the deceased and the Tribunal ought to have deducted 1/5th instead of 1/3rd towards personal expenses of the deceased. The Tribunal has not granted any enhancement towards future prospects. The amounts awarded by the Tribunal under conventional heads are meagre and prayed for enhancement of compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the appellants have not examined the employer or any other independent witness to prove the avocation and income of the deceased. Therefore, a sum



of Rs.3,000/- per month fixed by the Tribunal as notional income of the deceased is not meagre. The Tribunal has awarded compensation towards medical expenses and pain and sufferings for which the appellants are not entitled to. Therefore, the appellants are not entitled to any enhancement towards future prospects. The Tribunal considering entire materials on record, has awarded a sum of Rs.2,15,730/- as compensation to the appellants, which is not meagre. The appellants have not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

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

8. It is the case of the appellants that at the time of accident, the deceased was working as Watchman at Nadumaran Housing Board and was earning a sum of Rs.5,000/- per month. To prove the avocation and income of the deceased, the appellants have produced Ex.P5/pay certificate, wherein it has been mentioned that deceased was paid a sum of Rs.4,000/- per month. The Tribunal did not accept the said document as appellants did not take any steps to examine the employer or any independent witness to prove the avocation and income of the deceased and fixed notional income of the deceased at Rs.3,000/- per month. The accident is of the year 2003. Considering the date of accident and nature of work done by the deceased, a sum of Rs.3,500/- is fixed as monthly income of the deceased. It is the further case of the appellants that the deceased was aged 55 years at the time of accident and the appellants have produced Ex.P6/discharge summary and Ex.P7/Accident Register to that effect. The Tribunal has erroneously taken the age of the deceased as 62 years as per Ex.P2/postmortem certificate. The said contention is without merits. The age mentioned in Accident Register and discharge summary is as per the information given by the appellants. The appellants have not produced any documents to substantiate their case that the deceased was aged only 55 years at the time of accident. In such circumstances, the Tribunal has taken the age mentioned in Ex.P2/postmortem certificate and fixed the age of the deceased as 62 years as mentioned in Ex.P2/postmortem certificate. Therefore, the age of the deceased fixed by the Tribunal is proper. The Tribunal applied multiplier '5' for granting compensation for loss of dependency. 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 correct multiplier applicable is '7'. The Tribunal, following the II

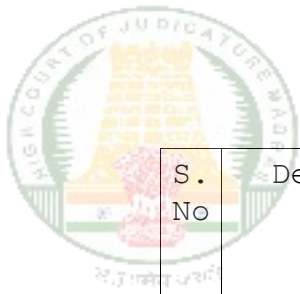


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Schedule, deducted 1/3rd towards personal expenses of the deceased. The dependants of the deceased are eight in numbers. Therefore, applying the principles laid down by the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC Supreme Court, cited supra, 1/5th is deducted towards personal expenses of the deceased. The deceased was aged above 60 years at the time of accident and hence, the appellants are not entitled to any enhancement towards future prospects. By fixing monthly income of the deceased at Rs.3,500/-, applying multiplier '7' and deducting 1/5th towards personal expenses, the amount awarded by the Tribunal towards loss of dependency is modified to Rs.2,35,200/- [Rs.3,500/- X 12 X 7 X 4/5].

9.The Tribunal has granted a sum of Rs.15,000/- towards pain and sufferings. The appellants are not entitled for the said amount and the same is liable to be set aside and it is hereby set aside. The Tribunal has granted only a sum of Rs.5,000/- towards loss of consortium to the 1st appellant and the same is meagre. Hence, a sum of Rs.40,000/- is granted towards loss of consortium to 1st appellant. The amount awarded by the Tribunal towards funeral expenses at Rs.3,000/- is meagre and hence, the same is enhanced to Rs.15,000/-. The Tribunal has not granted any amount towards loss of estate. The appellants are entitled to a sum of Rs.15,000/- towards loss of estate. The amounts awarded by the Tribunal towards loss of love and affection and medical expenses 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	1,20,000/-	2,35,200/-	Enhanced
2.	Loss of consortium to 1 st appellant	5,000/-	40,000/-	Enhanced
3.	Loss of love and affection to appellants 2 to 8	15,000/-	15,000/-	Confirmed
4.	Funeral expenses	3,000/-	15,000/-	Enhanced



S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
5.	Medical expenses	57,730/-	57,730/-	Confirmed
6.	Pain and sufferings	15,000/-	-	Set aside
7.	Loss of estate	-	15,000/-	Granted
	Total	Rs.2,15,730/-	Rs.3,77,930/-	Enhanced by Rs.1,62,200/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,15,730/- is hereby enhanced to Rs.3,77,930/-. The appellants are entitled to interest at the rate of 7.5% per annum from the date of petition till the date of deposit only for the amount awarded by the Tribunal. It is made clear that the appellants are not entitled to any interest for the delay period on Rs.1,62,200/-, the amount now enhanced by this Court as per the order of this Court dated 31.01.2014 made in M.P.No.1 of 2013 in C.M.A.SR.No.105532 of 2013. The 2nd respondent-Insurance Company is directed to deposit the award amount now determined by this Court, along with interest and costs, less the amount already deposited, if any, 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.290 of 2004 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai. On such deposit, the appellants are permitted to withdraw their respective share of the award amount now determined by this Court, as per the ratio of apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. No costs.

Sd/-

Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

Krk



To

1.The IV Judge,
Motor Accident Claims Tribunal,
Small Causes Court, Chennai.

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

+1cc to Mr.M.Malar, Advocate SR.No.65863

C.M.A.No.536 of 2014

PA(CO)
GN(08/02/2022)