



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.11.2021

CORAM:

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A.No.1490 of 2018
[video conferencing]

- 1.Sheeladevi @ Kanmani
- 2.Minor Sajith
- 3.Minor Harith
(Minor appellants 2 & 3 are represented by their
next friend / Guardian Mother, Sheeladevi @ Kanmani,
1st appellant herein)
- 4.Saroja
- 5.Mani ... Appellants / Petitioners

Vs.

- 1.Mani
(R1 remained exparte before Tribunal.
Hence, notice to R1 dispensed with)
- 2.United India Insurance Co., Ltd.,
Divisional Office - II, 1st Floor,
Peramanur Main Road, Peramanur,
Salem 636 007. ... Respondents / Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 20.11.2017 in M.C.O.P.No.168 of 2017, on the file of the Motor Accidents Claims Tribunal, Special District Court, Salem.

For Appellants : Mr.C.Paraneedharan
For R1 : Ex-parte
For R2 : Mr.T.Ravichandran

JUDGMENT

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the Tribunal in the award passed in M.C.O.P.No.168 of 2017 dated 20.11.2017 on the file of the Motor Accident Claims Tribunal, Special District Court, Salem.



2.The appellants are the claimants in M.C.O.P.No.168 of 2017, on the file of the Motor Accidents Claims Tribunal, Special District Court, Salem. They filed the above said claim petition, claiming a sum of Rs.50,00,000/- as compensation for the death of one Thirunavukkarasu, who died in the accident that took place on 18.08.2016.

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 belonging to 1st respondent and directed the 2nd respondent / Insurance Company to pay a sum of Rs.15,60,064/- as compensation to the appellants.

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

5.The learned counsel appearing for the appellants contended that at the time of accident, the deceased was a Power Loom Worker aged 35 years and was earning a sum of Rs.32,000/- per month. But, the Tribunal has fixed a meagre sum of Rs.10,000/- per month as notional income of the deceased including future prospects. The Tribunal ought to have fixed atleast a sum of Rs.20,000/- as monthly income of the deceased and awarded compensation. There are five dependants of the deceased and the Tribunal has erroneously deducted 1/3rd towards personal expenses of the deceased instead of deducting 1/4th. The total compensation awarded by the Tribunal is meagre and prayed for enhancement of compensation.

6.Per contra, learned counsel appearing for the 2nd respondent-Insurance Company contended that the appellants failed to prove the avocation and income of the deceased by producing valid document. In the absence of any material evidence with regard to avocation and income, a sum of Rs.10,000/- per month fixed by the Tribunal as notional income of the deceased is not meagre. The Tribunal considering the entire materials on record, has awarded a sum of Rs.15,60,064/- as compensation to the appellants, which is excessive. Hence, the appellants are not entitled for any enhancement 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 placed on record.



8. It is the case of the appellants that at the time of accident, the deceased was a Power Loom Worker aged 35 years and was earning a sum of Rs.32,000/- per month. The appellants have not proved the avocation and income of the deceased by producing valid document. In the absence of any valid document with regard to avocation and income, the Tribunal considering the age and nature of work done by the deceased, fixed a sum of Rs.10,000/- per month as notional income of the deceased including future prospects. The accident is of the year 2016. The cost of living has increased enormously and salary of even unskilled workers has increased substantially. Hence, a sum of Rs.12,000/- per month is fixed as notional income of the deceased. As per Ex.P7/driving licence of the deceased, the deceased was aged 35 years at the time of accident. The multiplier '16' applied by the Tribunal is correct 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 deceased was aged 35 years at the time of accident and the Tribunal has not granted any enhancement towards future prospects. As per the judgment of the Hon'ble Apex Court reported in 2017 (2) TNMAC 609 (SC), [National Insurance Company Limited Vs. Pranay Sethi and others], the appellants are entitled to 40% enhancement towards future prospects. There are five dependants of the deceased and the Tribunal erroneously deducted $\frac{1}{3}^{\text{rd}}$ towards personal expenses instead of deducting $\frac{1}{4}^{\text{th}}$ towards personal expenses of the deceased. Thus, by fixing Rs.12,000/- per month as notional income of the deceased, granting 40% enhancement towards future prospects and deducting $\frac{1}{4}^{\text{th}}$ towards personal expenses, the compensation awarded by the Tribunal towards loss of income is modified to Rs.24,19,200/- {Rs.16,800/- [Rs.12,000/- + Rs.4,800/- (40% of Rs.12,000/-)] X 12 X 16 X $\frac{3}{4}$ }. The Tribunal has awarded a sum of Rs.50,000/- as loss of consortium to the 1st appellant, which is excessive and hence the same is reduced to Rs.40,000/-. The Tribunal has awarded a sum of Rs.1,50,000/- towards loss of love and affection to appellants 2 & 3, who are the children of the deceased and the same is excessive. The appellants 2 & 3 are entitled to a sum of Rs.40,000/- each towards loss of love and affection. The appellants 4 & 5, being the parents of the deceased have lost their son in the accident. Therefore, a sum of Rs.50,000/- awarded by the Tribunal towards loss of love and affection is meagre and the appellants 4 & 5 are entitled to a sum of Rs.40,000/- each towards loss of love and affection. The Tribunal has not awarded any amount towards transportation. The appellants are entitled to a sum of Rs.15,000/- towards transportation. The amounts awarded by the Tribunal towards



funeral expenses and loss of estate are just and reasonable and hence, the same are hereby confirmed.

9. It is well settled that the Tribunal and the Courts have to award just compensation. Though the claimant has 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 income	Rs.12,80,064/-	Rs.24,19,200/-	Enhanced
2.	Funeral expenses	Rs.15,000/-	Rs.15,000/-	Confirmed
3.	Loss of estate	Rs.15,000/-	Rs.15,000/-	Confirmed
4.	Loss of consortium to 1 st appellant	Rs.50,000/-	Rs.40,000/-	Reduced
5.	Loss of love and affection to the 2 nd and 3 rd appellants	Rs.1,50,000/-	Rs.80,000/-	Enhanced
6.	Loss of love and affection to the 4 th and 5 th appellants	Rs.50,000/-	Rs.80,000/-	Reduced
7.	Transportation	----	Rs.15,000/-	Granted
	Total	Rs.15,60,064/-	Rs.26,64,200/-	Enhanced by Rs.11,04,136/-

10. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.15,60,064/- is hereby enhanced to Rs.26,64,200/- 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, 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.168 of 2017, on the file of the Motor Accidents Claims Tribunal, Special District Court, Salem. On such deposit, the appellants 1, 4 & 5 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. The share of the minor 2nd and 3rd appellants are directed to be deposited in any one of the Nationalized Banks, till the minor 2nd and 3rd appellants attains majority. On such deposit, the 1st appellant, being the Mother of the minor 2nd and 3rd appellants is permitted to withdraw the accrued interest once in three months for the welfare of the minor 2nd and 3rd appellants. The appellants are directed to pay the necessary Court fee for the enhanced amount of compensation. No costs.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

ssi
To:

- 1.The Motor Accidents Claims Tribunal,
Special District Judge, Salem.
- 2.The Section Officer,
VR Section, High Court,
Madras.

+lcc to Mr.C.Paranthaman, Advocate Sr.61711

C.M.A.No.1490 of 2018

gsm[co]
srg 16/02/2022