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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.12.2021

CORAM:

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A.No.1512 of 2018

1.Selvi

2.Minor Manju

3.Minor Iyyappan

(Minor appellants 2 & 3 are represented by their
mother / guardian Selvi, 1st appellant herein)

4.Kanniyammal

...Appellants/Petitioners

Vs.

1.N.Sekar

2.H.Raaju

3.Universal Sombo General Insurance Company Limited,
RO 201-208, Crystal Plaza,
Opp. Infiniti Mall,
Link Road, Andheri (West),
Mumbai - 400 058.

...Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and decree dated 27.02.2018 in M.C.O.P.No.1033 of 2013, on the file of the Motor Accidents Claims Tribunal, I Additional District Court, Cuddalore.

For Appellants	:	Mrs.Ramya Viswanatha Rao
For R1 & R2	:	No appearance
For R3	:	Mrs.Srividhya

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.1033 of 2013 dated 27.02.2018 on the file of the Motor Accident Claims Tribunal, I Additional District Court, Cuddalore.



2. The appellants are the claimants in M.C.O.P.No.1033 of 2013, on the file of the Motor Accidents Claims Tribunal, I Additional District Court, Cuddalore. They have filed the above said claim petition, claiming a sum of Rs.20,00,000/- as compensation for the death of one Manickam @ Malayalam, who died in the accident that took place on 13.01.2013.

3. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident had occurred due to rash and negligent driving by the driver/1st respondent of the Auto rickshaw belonging to 2nd respondent and directed the 3rd respondent/Insurance Company to pay a sum of Rs.11,41,000/- as compensation to the appellants.

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

5. The learned counsel appearing for the appellants/claimants contended that, at the time of accident, the deceased was makers of Dhristhi Toys and other articles aged about 30 years and was earning a sum of Rs.20,000/- per month. But, the Tribunal has fixed a meagre sum of Rs.7,000/- per month as notional income of the deceased. There are four 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 very meagre and hence, the learned counsel for the appellants/claimants prayed for enhancement of compensation.

6. Per contra, Mrs.Srividhya, learned counsel appearing for the 3rd respondent/Insurance Company contended that the appellants/claimants failed to prove the avocation and income of the deceased by producing valid documents. In the absence of any material evidence with regard to avocation and income, the sum of Rs.7,000/- per month fixed by the Tribunal as notional income of the deceased, is not meagre. The Tribunal, considering the entire materials on record, had awarded a sum of Rs.11,41,000/- as compensation to the appellants/claimants, which is excessive. Therefore, the appellants/claimants are not entitled for any enhancement and hence, the learned counsel for 3rd respondent Insurance Company prayed for dismissal of the appeal.

7. Heard the learned counsel appearing for the appellants/claimants as well as the learned counsel appearing for the 3rd respondent/Insurance Company and perused the entire materials available on record.



8. It is the case of the appellants/claimants, at the time of accident, the deceased was makers of Dhristhi Toys and other articles aged about 28 years and was earning a sum of Rs.20,000/- per month. The appellants/claimants have not proved the avocation and income of the deceased by producing valid document. In the absence of any valid documents with regard to avocation and income, the Tribunal fixed a sum of Rs.7,000/- per month as notional income of the deceased. The accident had occurred in the year 2013. The cost of living has increased enormously and salary of even unskilled workers has increased substantially. Hence, a sum of Rs.9,000/- per month is fixed as notional income of the deceased. As per Ex.P2/post-mortem report of the deceased as also the evidence of P.W.1, it is clear that shows the deceased was aged 30 years at the time of accident. The Tribunal has rightly applied multiplier '17' as per the judgment of the Hon'ble Apex Court reported in 2009 (2) TN MAC 1 (SC), [Sarla Verma & others Vs. Delhi Transport Corporation & another]. The Tribunal has not granted any compensation towards future prospects. The appellants/claimants are entitled to 40% amount towards "future prospects" as per the judgment of the Hon'ble Apex Court reported in 2017 (2) TN MAC 609 (SC), [National Insurance Company Limited Vs. Pranay Sethi and others]. There are four dependants of the deceased and the Tribunal erroneously deducted $1/3^{\text{rd}}$ towards personal expenses of the deceased, instead of deducting $1/4^{\text{th}}$. Thus, the compensation awarded by the Tribunal towards "loss of income" is modified to Rs.19,27,800/- {Rs.12,600/- [Rs.9,000/- + Rs.3,600/- (40% of Rs.9,000/-)] X 12 X 17 X $3/4$ }.

9. The Tribunal has awarded a sum of Rs.40,000/- towards "loss of consortium" to the 1st appellant, which is just and reasonable and hence the same is hereby confirmed. The Tribunal has awarded a sum of Rs.15,000/- towards "loss of love and affection" to appellants 2 to 4, who are the children and mother of the deceased which is meagre and the same are hereby enhanced to Rs.40,000/- each towards "loss of love and affection" to the appellants 2 to 4. The Tribunal has not awarded any amount towards "loss of estate". The appellants/claimants are entitled to a sum of Rs.15,000/- towards "loss of estate". The Tribunal has awarded a meagre sum of Rs.15,000/- towards "funeral expenses" and "transportation". The appellants are entitled to a sum of Rs.15,000/- each towards "funeral expenses" and "transportation".



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10. 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 income	Rs.10,71,000/-	Rs.19,27,800/-	Enhanced
2.	Funeral expenses and transportation	Rs.15,000/-	Rs.30,000/-	Enhanced
3.	Loss of estate	---	Rs.15,000/-	Granted
4.	Loss of consortium to 1 st appellant	Rs.40,000/-	Rs.40,000/-	Confirmed
5.	Los of love and affection to the appellants 2 to 4.	Rs.15,000/-	Rs.1,20,000/-	Enhanced
	Total	Rs.11,41,000/-	Rs.21,32,800/-	Enhanced by Rs.9,91,800/-

11. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.11,41,000/- is hereby enhanced to Rs.21,32,800/- [Rupees Twenty One Lakhs Thirty Two Thousand and Eight Hundred only] together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. The 3rd respondent/Insurance Company is directed to deposit the enhanced 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.1033 of 2013, on the file of the Motor Accidents Claims Tribunal, I Additional District Court, Cuddalore. On such deposit, the appellants 1 & 4 are permitted to withdraw their respective shares, now awarded by this Court as per the apportionment fixed by the Tribunal, along with 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, in any interest bearing Fixed Deposit Scheme 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. Since, this Court had enhanced the compensation, the appellants/claimants are directed to pay necessary Court fee, if any, on the enhanced compensation. In other aspects, the award of the Tribunal shall stand confirmed. There shall be no orders as to costs in the present appeal.

s/d-
Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

ssi
To:

1.The Motor Accidents Claims Tribunal,
I Additional District Judge,
Cuddalore.

Copy to
The Section Officer,
VR Section,
High Court of Madras.

+4 Ccs to M/s. Ramya V. Rao, Advocate sr 69495, 62679
+1 CC to M/s.R. Sreevidya, Advocate sr 68932.

C.M.A.No.1512 of 2018

AD(CO)
SP(31/03/2022)