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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.07.2021

CORAM:

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A.No.1984 of 2021

1.Vetrayan

2.Shantha

...Appellants

Vs.

1. P.Arumugam

2. The Manager,
Cholamandalam MS General Insurance Company Ltd,
Registered Office, Dare House,
No.2, N.S.C.Bose Road,
Chennai-600 001.

...Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 05.04.2018 made in M.C.O.P.No.240 of 2017 on the file of the Motor Accident Claims Tribunal, Special District Court, Krishnagiri.

For Appellants : Mr.S.P.Yuaraj

For R2 : M/s.S.Harini

JUDGMENT

The matter is heard through "Video Conferencing".

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 05.04.2018 made in M.C.O.P.No.240 of 2017 on the file of the Motor Accident Claims Tribunal, Special District Court, Krishnagiri.

2.The appellants are the claimants in M.C.O.P.No.240 of 2017 on the file of the Motor Accident Claims Tribunal, Special District Court, Krishnagiri. They filed the above said claim petition, claiming a sum of Rs.30,00,000/- as compensation for the death of their son viz., Govindasamy, who died in the accident that took place on 04.01.2016.



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 lorry belonging to the 1st respondent and directed both the 1st respondent and 2nd respondent-Insurance Company are jointly and severally liable to pay a sum of Rs.13,90,800/- 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 at the time of accident, the deceased was aged 24 years and working as driver and was earning a sum of Rs.25,000/- per month. But the Tribunal fixed a meagre sum of Rs.9,000/- per month as notional income of the deceased. The Tribunal ought to have fixed monthly income of the deceased at Rs.25,000/- as claimed by the appellants. Further, the Tribunal failed to award any amount towards loss of love & affection and transportation and prayed for enhancement of the compensation.

6.Per contra, M/s.S.Harini, learned counsel appearing for the 2nd respondent-Insurance Company contended that the appellants have 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 of the deceased, a sum of Rs.9,000/- per month fixed by the Tribunal as notional income of the deceased is not meagre. The amounts awarded by the Tribunal under different heads are not meagre. The Tribunal considering the entire materials on record, awarded a sum of Rs.13,90,800/- as compensation to the appellants which is excessive. 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.From the materials available on record, it is seen that it is the contention of the appellants that at the time of accident, the deceased was aged 24 years, working as driver and was earning a sum of Rs.25,000/- per month. The appellants failed to prove the avocation and income of the deceased. In the absence of any material evidence with regard to avocation and income of the deceased, the Tribunal has fixed only a sum of Rs.9,000/- per month as notional income of the deceased. The accident occurred in the year 2016 and the monthly income fixed by the Tribunal is meagre. Considering the year of accident, age and nature of work done by the deceased, a sum of Rs.12,000/-



per month is fixed as notional income of the deceased. Following the judgments of the Hon'ble Apex Court reported in 2017 (2) TNMAC 609 (SC), [National Insurance Company Limited Vs. Pranay Sethi and others] and 2009 (2) TNMAC 1 SC Supreme Court, [Sarla Verma & others Vs. Delhi Transport Corporation & another], the Tribunal granted 40% enhancement towards future prospects of the deceased and applied multiplier '18' and the same are proper. The deceased was a bachelor at the time of accident and the Tribunal has rightly deducted 50% towards personal expenses of the deceased. Thus, the amount awarded by the Tribunal towards loss of dependency is modified to Rs.18,14,400/- {Rs.16,800/- [(Rs.12,000/- + Rs.4,800/- (40% of Rs.12,000/-)] x 12 x 18 x ½}. The Tribunal has not awarded any amount towards loss of love & affection and transportation. Therefore, the appellants are entitled to a sum of Rs.90,000/- and Rs.10,000/- towards loss of love & affection and transportation respectively. Therefore, the compensation awarded by the Tribunal under other heads are just and reasonable and hence, the same are 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	13,60,800/-	18,14,400/-	Enhanced
2.	Loss of love and affection	-	90,000/-	Granted
3.	Funeral expenses	15,000/-	15,000/-	Confirmed
4.	Loss of estate	15,000/-	15,000/-	Confirmed
5.	Transportation	-	10,000/-	Granted
	Total	Rs.13,80,800/-	Rs.19,44,400/-	Enhanced by Rs.5,63,600/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.13,80,800/- is hereby enhanced to Rs.19,44,400/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. Both the 1st respondent and 2nd respondent-Insurance Company are 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 four weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.240 of 2017 on the file of the Motor Accident Claims Tribunal, Special District Court, Krishnagiri. 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

True Copy//

Sub Assistant Registrar

gbi

To

1. The Special District Judge,
Motor Accident Claims Tribunal,
Krishnagiri.
2. The Section Officer,
VR Section,
High Court,
Madras.

+1cc to Mr.S.P.Yuaraj, Advocate, S.R.No.35176
+1cc to M/s.C.Harini, Advocate, S.R.No.35222

C.M.A.No.1984 of 2021

RGN[co]
NSK 26/11/2021