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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.02.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3856 of 2019

1.Mahesh
2.Savithiri

.. Appellants/Petitioners

Vs.

1.Thangarasu

2.The Divisional Manager
New India Assurance Company Limited
Divisional Office
No.29, Paramathi road
Namakkal.

.. Respondents/Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 12.04.2018 made in M.C.O.P.No.18 of 2015 on the file of Motor Accident Claims Tribunal, Principal District Court, Namakkal.

For Appellants : Mr.A.Sathishkumar
for Mr.C.Thangaraju

For R2 : Mr.K.Vinoth
R1 : Exparte

J U D G M E N T

This matter is heard through "Video-Conferencing".

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 12.04.2018 made in M.C.O.P.No.18 of 2015 on the file of Motor Accident Claims Tribunal, Principal District Court, Namakkal.

2.The appellants are the claimants in M.C.O.P.No.18 of 2015 on the file of Motor Accident Claims Tribunal, Principal District Court, Namakkal. They filed the said claim petition claiming a sum of Rs.25,00,000/- as compensation for the death



of their son viz., Sakthivel, who died in the accident that took place on 06.12.2014.

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 mini lorry belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said mini lorry to pay a sum of Rs.4,91,863/- as compensation to the appellants at the first instance and recover the same from the 1st respondent as the driver of the mini lorry belonging to the 1st respondent did not possess valid driving license to drive the vehicle at the time of accident.

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 deceased was aged 9 years at the time of accident. The Tribunal ought to have fixed the annual income of the deceased including future prospects at Rs.60,000/-. The Tribunal without considering the same erred in fixing a sum of Rs.15,000/- per annum. The appellants have lost their son at his young age. The Tribunal failed to award any compensation towards loss of love and affection and prayed for enhancement of compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the Tribunal fixed a sum of Rs.15,000/- per annum as per II Schedule of the Motor Vehicles Act, which is proper. The total compensation awarded by the Tribunal 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 2nd respondent/Insurance Company and perused the entire materials available on record.

8.From the materials available on record, it is seen that it is the contention of the appellants that the deceased was a minor boy aged 9 years at the time of accident and died due to the injuries sustained by him in the accident that occurred on 06.12.2014. The Tribunal fixed a sum of Rs.15,000/- per annum as notional income of the deceased and applied multiplier '20' as per column (6) of the table given in the judgment of the Hon'ble Apex reported in 2009 (2) TNMAC 1 SC Supreme Court (Sarla Verma vs. Delhi Transport Corporation), which is not proper. The Hon'ble Apex Court in the judgment reported in 2013 (2) TNMAC 358 (SC), [Kishan Gopal & another Vs. Lala & others],



considering the passage of time from the date of incorporating II Schedule and rise in cost of living, fixed notional income of the minor at Rs.30,000/- per annum. In the present case, the accident is of the year 2014. Therefore, the annual income of the minor deceased is fixed at Rs.30,000/-. The deceased was aged 9 years at the time of accident and the correct multiplier applicable as per the II Schedule is '15'. By applying multiplier '15' and fixing annual income at Rs.30,000/-, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.4,50,000/- [Rs.30,000/- x 15]. A sum of Rs.1,20,000/- awarded by the Tribunal towards future prospects is liable to be set aside and is hereby set aside. The Tribunal has not awarded any compensation towards loss of love and affection. The appellants have lost their son at young age and hence, a sum of Rs.40,000/- is awarded towards loss of love and affection. The amounts awarded by the Tribunal towards loss of estate, funeral expenses and medical bills are just and reasonable and hence, they 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 or reduced
1.	Loss of dependency	3,00,000	4,50,000	Enhanced
2.	Future prospects	1,20,000	-	Set aside
3.	Loss of estate	15,000	15,000	Confirmed
4.	Funeral expenses	15,000	15,000	Confirmed
5.	Medical bills	41,863	41,863	Confirmed
6.	Loss of love and affection	-	40,000	Granted
	Total	4,91,863	5,61,863	Enhanced by Rs.70,000/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.4,91,863/- is hereby enhanced to Rs.5,61,863/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit excluding the default period from 23.09.2016 to 18.09.2017. 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 if any, already deposited, within a period of six weeks from the date of receipt of a copy of this judgment at the first instance and recover the same from the 1st respondent. On such deposit, the appellants are permitted to withdraw their respective share of the award amount now determined by this Court as per the apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

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To

1.The Principal District Judge
The Motor Accident Claims Tribunal
Namakkal.

2.The Section Officer
V.R.Section
High Court, Chennai.

+2ccs to Mr.A.Sathish Kumar, Advocate SR.No.5774

+1cc to Mr.K.Vinod, Advocate SR.No.5509

C.M.A.No.3856 of 2019

NRL(CO)
HS(06/09/2021)