



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.07.2021

CORAM

THE HONOURABLE TMT.JUSTICE S.KANNAMMAL

CIVIL MISCELLANEOUS APPEAL NO. 1343 OF 2020

1.V.Vasudevan

2.V.Varalakshmi

...Appellants / Petitioners

Versus

1.P.Easwaramoorthy

2.The Divisional Manager,

The New India Assurance Company Limited.,

Do.No.179, IIIrd Floor,

JN Street, Puducherry-605 001.

...Respondents / Respondents

(Third Party Claims Office at

232, Bombay Mutual Buildings,

NSC Bose Road, Chennai - 1)

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree dated 17.02.2020 made in M.C.O.P. No. 1472 of 2017 on the file of the Motor Accident Claims Tribunal/Special Sub Judge, Cuddalore(FAC).

For Appellant : Mrs.RamyaV.Rao

For R2 : K.Vinod

For R1 : Tapal returned as "No such person"

JUDGMENT

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

2.This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 17.02.2020 made in M.C.O.P. No. 1472 of 2017 on the file of the Motor Accident Claims Tribunal/Special Sub Judge, Cuddalore(FAC).

3.The appellants are the claimants in M.C.O.P.No.1472 of 2017 on the file of the Motor Accident Claims Tribunal/Special Sub Judge, Cuddalore(FAC). The appellants are father and mother of the deceased. They filed the above said claim petition,



4.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 first respondent and directed the second respondent-Insurance Company, being the insurer of the vehicle to pay a sum of Rs.16,90,000/- as compensation to the appellants at the first instance and recover the same from the first respondent.

6.The learned counsel appearing for the appellants contended that at the time of accident the deceased was aged 24 years, working as Heavy Vehicle Driver and was earning a sum of Rs.25,000/- per month. To prove the same, the appellants filed Ex.P13 to 16 and examined the co-employer of the deceased, Saravanan as P.W.3. The Tribunal failed to consider the evidence of P.W.3, Ex.P13 to 16 and fixed a meagre sum of Rs.10,000/- per month as notional income of the deceased. The Tribunal ought to have fixed a sum of Rs.17,000/- as monthly income of the deceased and awarded compensation. The Tribunal has not awarded any compensation towards loss of love and affection and prayed for enhancement of compensation.

8. I have heard the learned counsel appearing for the appellants as well as the second respondent-Insurance Company and perused the entire materials on record.

9. It is the contention of the appellants that the deceased was aged 25 years and was a coolie and was earning a sum of Rs.17,000/- per month. The appellants have not produced any material evidence to prove the same. In the absence of material evidence, the Tribunal fixed a sum of Rs.10,000/- as monthly income of the deceased. The accident occurred in the year 2017. The monthly income of deceased fixed by the Tribunal is meager



and a sum of Rs.14,000/- is fixed by this Court as monthly income of the deceased. The deceased was aged 25 years and the appellants are entitled to 50% enhancement towards future prospects. Applying multiplier '18' and deducting $1/2$, the amount awarded by the Tribunal towards loss of dependency is modified to Rs.22,68,000/- [Rs.14,000/- + Rs.7,000/- (50% of Rs.14,000/-) $\times$ 12 $\times$ 18 $\times$ $1/2$]. The Tribunal has erroneously awarded the compensation towards Loss of Consortium instead of granting under the head of Loss of Love and Affection. Therefore, this Court is of the view that the amount granted under the said head is meagre and accordingly it is enhanced to Rs.80,000/-. The Tribunal has not awarded any compensation towards Transportation Expenses. A sum of Rs.15,000/- is granted towards Transportation Expenses. The amount awarded by the Tribunal under other heads 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	16,20,000/-	22,68,000/-	enhanced
2.	Loss of estate	15,000/-	15,000/-	confirmed
3.	Loss of Love and Affection	40,000/-	80,000/-	enhanced
4.	Funeral expenses	15,000/-	15,000/-	confirmed
5.	Transportation Expenses	--	15,000/-	Granted
	Total	Rs.16,90,000/-	Rs.23,93,000/-	enhanced by Rs.7,03,000/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.16,90,000/- is hereby enhanced to Rs.23,93,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellants are directed to pay the Court fee, if any on the enhanced amount of compensation. The second 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 at the first instance and recover the same from the first respondent. On such deposit, the appellants are permitted to withdraw their respective share of the enhanced award amount now determined by this Court, as per the ratio of apportionment fixed by the Tribunal, along with



interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. No costs.

Sd/-
Assistant Registrar

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//True Copy//

Sub Assistant Registrar

mpa

To

1.The Motor Accident Claims Tribunal/Special Sub Judge,
The Special Sub Court,
Cuddalore.

Copy To

The Section Officer
Vernacular Records Section
High Court, Madras.

+1cc to Mr.K.Vinod, Advocate, S.R.No.34625

+1cc to Mrs.Ramya Rao, Advocate, S.R.No.34852

CMA.No.1343 of 2020

SRA(CO)
RVM(15/11/2021)