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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.03.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1684 of 2020

- 1.Dhanabakkiyam
- 2.Minor. Saravana
- 3.Minor. Surul Kumar
(Minor petitioners 2 and 3 are represented
by their mother and natural Guardians
Dhanabakkiyam, 1st appellant herein)
- 4.Poongavanam
- 5.Kaliyamoorthy ..Appellants/Petitioners

Vs.

1. M/s.S.R.S. Travels,
Proprietor Tr K.T.Rajashekar,
S/o.K.T.Gowda,
Residing at
14/6, PP.V.Koil Street,
Madipakkam,
Chennai.
2. ICICI Lombard Insurance Company Limited,
Having its office at
No.140, Chottabhai Centre,
Nungambakkam High Road,
Chennai - 600 034. ..Respondents/Respondents

(R1 remained exparte before Tribunal.
Hence, notice to R1 dispensed with)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 14.03.2019 made in M.C.O.P.No.629 of 2014, on the file of the Motor Accidents Claims Tribunal, IV Additional District Court, Ponneri.

For Appellants	:	Mrs.A.Subadra for Mr.K.M.Ramesh
For R1	:	No appearance
For R2	:	Mr.Sivakollapan



J U D G M E N T

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 14.03.2019 made in M.C.O.P.No.629 of 2014, on the file of the Motor Accidents Claims Tribunal, IV Additional District Court, Ponneri.

3.The appellants are the claimants in M.C.O.P.No.629 of 2014, on the file of the Motor Accidents Claims Tribunal, IV Additional District Court, Ponneri. They filed the above said claim petition, claiming a sum of Rs.20,00,000/- as compensation for the death of one Sakthivel, who died in the accident that took place on 19.03.2014.

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 bus owned by 1st respondent and directed the 2nd respondent-Insurance Company to pay a sum of Rs.14,20,000/- as compensation to the appellants.

5.Not being satisfied with the amounts awarded by the Tribunal, the appellants have come out with the present appeal seeking enhancement of compensation.

6.The learned counsel appearing for the appellants contended that at the time of accident the deceased was aged 36 years, a Building Contractor and was earning a sum of Rs.25,000/- per month. But, the Tribunal has fixed a meagre sum of Rs.10,000/- per month as notional income of the deceased. The Tribunal ought to have fixed atleast a sum of Rs.25,000/- as monthly income of the deceased and awarded compensation. The Tribunal failed to award any amount towards loss of consortium to 1st appellant and prayed for enhancement of compensation.

7.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 excessive. The Tribunal considering the entire materials on record, has awarded a sum of Rs.14,20,000/- as compensation to the appellants, which is excessive. The appellants have not made out any case for enhancement and prayed for dismissal of the appeal.

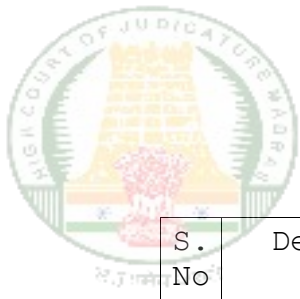


8. Though notice has been served on the 1st respondent and his name is printed in the cause list, there is no representation for him, either in person or through counsel.

9. 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.

10. It is the case of the appellants that at the time of accident the deceased was aged 36 years, a Building Contractor and was earning a sum of Rs.25,000/- 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. The accident is of the year 2014. 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 Exs.P2/ Death Report & P3/Postmortem certificate, the deceased was aged 36 years at the time of accident. The Tribunal following 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], rightly applied multiplier '15'. The Tribunal failed to grant 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 has rightly deducted 1/4th 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, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.22,68,000/- {Rs.16,800/- [Rs.12,000/- + Rs.4,800/- (40% of Rs.12,000/-)] X 12 X 15 X $\frac{3}{4}$ }. The Tribunal has not awarded any amount towards loss of consortium to 1st appellant. The 1st appellant, being the wife of the deceased is entitled to a sum of Rs.40,000/- towards loss of consortium. This Court is of the considered view that the amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same is hereby confirmed.

11. 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:



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S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	13,50,000/-	22,68,000/-	Enhanced
2.	Loss of consortium to 1 st appellant	-	40,000/-	Granted
3.	Funeral expenses	15,000/-	15,000/-	Confirmed
4.	Loss of estate	15,000/-	15,000/-	Confirmed
5.	Loss of love and affection to appellants 2 to 5	40,000/-	40,000/-	Confirmed
	Total	Rs.14,20,000/-	Rs.23,78,000/-	Enhanced by Rs.9,58,000/-

12. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.14,20,000/- is hereby enhanced to Rs.23,78,000/- 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.629 of 2014, on the file of the Motor Accidents Claims Tribunal, IV Additional District Court, Ponneri. 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 appellants 2 & 3 are directed to be deposited in any one of the Nationalized Banks, till the minor appellants 2 & 3 attain majority. On such deposit, the 1st appellant, being the Mother of the minor appellants 2 & 3 is permitted to withdraw the accrued interest once in three months for the welfare of the minor appellants 2 & 3. The appellants are directed to pay the necessary Court fee for the enhanced amount of compensation now determined by this Court. It is made clear that the appellants are not entitled to any interest for



the default period on the amount of Rs.9,58,000/- now enhanced by this Court, as per the order of this Court dated 03.11.2020 made in C.M.P.No.11192 of 2020 in C.M.A.No.SR.63592 of 2020. No costs.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The IV Additional District Judge,
Motor Accident Claims Tribunal,
Ponneri.

2.The Section Officer,
VR Section,
High Court,
Madras.

+1cc to M/s.K.M.Ramesh, Advocate Sr No.20956

+1cc to M/s.B.Siva Kollapan, Advocate Sr No.21126

C.M.A.No.1684 of 2020

GMI (CO)
PR (20/10/2021)