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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 16.06.2021	Delivered on: 25.06.2021
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CORAM:

THE HONOURABLE TMT.JUSTICE S.KANNAMMAL

C.M.A.No.113 of 2014

1.S.Rasiya
2.Minor. S.Mawinkumaar
3.Minor. S.Nandhini Sri
(Minor appellants 2 & 3 represented by their Mother
and next friend, S.Rasiya, 1st appellant herein)
4.Kanniappan .. Appellants/Petitioners

Vs.

1.A.Ravisekar
2.The New India Assurance Company Limited,
Sundaram Finance Building, II Floor,
No.21, Pattulos Road, Chennai - 600 002.
3.M/s. Ashok Leyland Limited,
No.19, Rajaji Salai, Parrys,
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 11.01.2012 made in M.C.O.P.No.1017 of 2009, on the file of the Motor Accidents Claims Tribunal, II Fast Track Judge, III Additional District Court, Poonamallee, Tiruvallur.

For Appellants : Mr.P.Natarajan

For R2 : Mr.P.G.Padmanabhan

J U D G M E N T

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

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the Tribunal in the award dated 11.01.2012 made in M.C.O.P.No.1017 of 2009, on the file of the Motor Accidents Claims Tribunal, II Fast Track Judge, III Additional District Court, Poonamallee, Tiruvallur.



2.The appellants are the claimants in M.C.O.P.No.1017 of 2009, on the file of the Motor Accidents Claims Tribunal, II Fast Track Judge, III Additional District Court, Poonamallee, Tiruvallur. They filed the above said claim petition, claiming a sum of Rs.15,00,000/- as compensation for the death of one K.Selvam, who died in the accident that took place on 02.06.2009.

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 bus belonging to 1st respondent and directed the 2nd respondent-Insurance Company to pay a sum of Rs.6,77,000/- as compensation to the appellants at the first instance and recover the same from the respondents 1 & 3.

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 33 years, working as Plumber cum Drainage Cleaner under one T.Vedagiri and was earning a sum of Rs.7,500/- to Rs.9,000/- per month. But, the Tribunal has fixed a meagre sum of Rs.4,500/- per month as notional income of the deceased. The Tribunal ought to have fixed a sum of Rs.9,000/- as monthly income of the deceased as claimed by the appellants and awarded compensation. The deceased was aged 33 years at the time of accident and the Tribunal has not granted any enhancement towards future prospects. There are four dependants of the deceased and the Tribunal ought to have deducted 1/4th towards personal expenses of the deceased instead of deducting 1/3rd. The amounts awarded by the Tribunal towards loss of consortium to 1st appellant, loss of love and affection to appellants 2 & 3, funeral expenses and transportation are meagre. The Tribunal failed to award any amount towards loss of estate and loss of love and affection to 4th appellant and prayed for enhancement of compensation.

6.Per contra, learned counsel appearing for the 2nd respondent-New India Assurance Company Limited contended that the appellants 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, a sum of Rs.4,500/- per month fixed by the Tribunal as notional income of the deceased is not meagre. The deceased was aged 33 years at the time of accident and the correct multiplier applicable is '16' and the Tribunal has erroneously applied multiplier '17' and awarded compensation. In view of the same, the appellants are not entitled to any enhancement 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-New India Assurance Company Limited and perused the entire materials on record.

8. It is the case of the appellants that at the time of accident the deceased was aged 33 years, working as Plumber cum Drainage Cleaner under one T.Vedagiri and was earning a sum of Rs.7,500/- to Rs.9,000/- per month. Except oral evidence, the appellants have not filed any document to prove the avocation and income of the deceased. 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.4,500/- per month as notional income of the deceased. The accident is of the year 2009 and the cost of living has increased enormously. Hence, a sum of Rs.6,500/- per month is fixed as notional income of the deceased. As per Ex.P3/Postmortem Certificate, Ex.P5/Death Certificate and Ex.P7/Death Report, the deceased was aged 33 years at the time of accident and the multiplier '17' applied by the Tribunal is not correct. As per 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], the correct multiplier applicable is '16'. The deceased was aged 33 years at the time of accident and the Tribunal has not granted 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 four dependants of the deceased and the Tribunal has erroneously deducted 1/3rd towards personal expenses of the deceased instead of deducting 1/4th. Thus, by fixing Rs.6,500/- per month as notional income of the deceased, granting 40% enhancement towards future prospects, applying multiplier '16' and deducting 1/4th towards personal expenses of the deceased, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.13,10,400/- {Rs.9,100/- [Rs.6,500/- + Rs.2,600/- (40% of Rs.6,500/-)] X 12 X 16 X $\frac{3}{4}$ }. The amounts awarded by the Tribunal towards loss of consortium to 1st appellant, loss of love and affection to appellants 2 & 3, funeral expenses and transportation are meagre and the same are enhanced to Rs.40,000/-, Rs.80,000/-, Rs.15,000/- and Rs.15,000/- respectively. The Tribunal failed to award any amount towards loss of estate and loss of love and affection to 4th appellant. Therefore, the appellants are entitled to a sum of Rs.15,000/- towards loss of estate and the 4th appellant is entitled to a sum of Rs.40,000/- towards loss of love and affection.



9. 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:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	6,12,000/-	13,10,400/-	Enhanced
2.	Loss of consortium to 1 st appellant	20,000/-	40,000/-	Enhanced
3.	Loss of love and affection to appellants 2 & 3	30,000/-	80,000/-	Enhanced
4.	Funeral expenses	10,000/-	15,000/-	Enhanced
5.	Transportation	5,000/-	15,000/-	Enhanced
6.	Loss of love and affection to 4 th appellant	-	40,000/-	Granted
7.	Loss of estate	-	15,000/-	Granted
	Total	Rs.6,77,000/-	Rs.15,15,400/-	Enhanced by Rs.8,38,400/-

10. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.6,77,000/- is hereby enhanced to Rs.15,15,400/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd respondent-New India Assurance Company Limited 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.1017 of 2009, on the file of the Motor Accidents Claims Tribunal, II Fast Track Judge, III Additional District Court, Poonamallee, Tiruvallur, at the first instance and recover the same from the respondents 1 & 3. On such deposit, the appellants 1 & 4 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 on the enhanced amount of compensation now determined by this Court. No costs.

Sd/-

Deputy Registrar (Lok Adalat)

//True Copy//

Sub Assistant Registrar

krk

To

- 1.The II Fast Track Judge,
Motor Accident Claims Tribunal,
III Additional District Court, Poonamallee,
Tiruvallur.
- 2.The Section Officer,
VR Section,
High Court, Madras.

+lcc to Mr.P.Natarajan, Advocate, S.R.No.29422
+lcc to Mr.P.G.Padmanabhan, Advocate, S.R.No.29574

C.M.A.No.113 of 2014

SPD(CO)
CB(28/10/2021)