

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.01.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3173 of 2019

1. Ranchani
2. Thiruvarutselvan .. Appellants/Petitioners

Vs.

1. T.K.Gulzar
2. The Divisional Manager,
The United India Insurance Company Limited,
3rd Party Claims HUB, 2nd Floor,
No.81, Katpadi Road,
Vellore - 4. .. Respondents/Respondents

(No relief sought against 1st respondent.
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 25.01.2019 made in M.C.O.P.No.473 of 2017 on the file of the Motor Accident Claims Tribunal, I Additional District & Sessions Court, Vellore.

For Appellants : Mr.M.Sivakumar
for Mr.C.Prabakaran
For R2 : Mr.J.Chandran

JUDGMENT

The matter is heard through "Video Conferencing".

2.This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 25.01.2019 made in M.C.O.P.No.473 of 2017 on the file of the Motor Accident Claims Tribunal, I Additional District & Sessions Court, Vellore.

3.The appellants are the claimants in M.C.O.P.No.473 of 2017 on the file of the Motor Accident Claims Tribunal, I Additional District & Sessions Court, Vellore. They filed the above said claim petition, claiming a sum of Rs.40,00,000/- as compensation for the death of their son viz., Sindhujan, who died in the accident that took place on 04.03.2017.

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 van belonging to the 1st respondent and directed the 2nd respondent-Insurance Company to pay a sum of Rs.11,30,281/- as compensation to the appellants at the first instance and recover the same from the 1st respondent.

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 20 years, a Hotel Management Holder and working in Private Concern and was earning a sum of Rs.18,000/- per month and also trying to go to abroad. But the Tribunal fixed a meagre sum of Rs.6,000/- per month as notional income of the deceased. The Tribunal ought to have fixed monthly income of the deceased at Rs.18,000/- as claimed by the appellants. The amount awarded by the Tribunal towards loss of love and affection and funeral expenses are meagre. The Tribunal failed to award any amount towards loss of estate and prayed for enhancement of compensation.

7.Per contra, the 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.6,000/- per month fixed by the Tribunal as notional income of the deceased is not meagre. The Tribunal has awarded a sum of Rs.1,78,081/- towards medical expenses for which the appellants are not entitled to. 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.11,30,281/- 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.

8.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.

9. 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 20 years, a Hotel Management Holder and working in Private Concern and was earning a sum of Rs.18,000/- per month and also trying to go to abroad. 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 a sum of Rs.6,000/- per month as notional income of the deceased. The accident occurred in the year 2017 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 amount awarded by the Tribunal towards loss of love and affection and funeral expenses are meagre. The appellants are entitled to a sum of Rs.40,000/- each towards loss of love and affection and Rs.15,000/- towards funeral expenses. The Tribunal has not awarded any amount towards loss of estate. The appellants are entitled to a sum of Rs.15,000/- towards loss of estate. The amounts awarded by the Tribunal towards medical expenses and transportation are just and reasonable and hence, the same 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
1.	Loss of dependency	9,07,200/-	18,14,400/-	Enhanced
2.	Loss of love and affection	30,000/-	80,000/-	Enhanced
3.	Funeral expenses	10,000/-	15,000/-	Enhanced
4.	Medical expenses	1,78,081/-	1,78,081/-	Confirmed
5.	Transportation	5,000/-	5,000/-	Confirmed

6.	Loss of estate	-	15,000/-	Granted
	Total	Rs.11,30,281/-	Rs.21,07,481/-	Enhanced by Rs.9,77,200/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.11,30,281/- is hereby enhanced to Rs.21,07,481/- 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.473 of 2017 on the file of the Motor Accident Claims Tribunal, I Additional District & Sessions Court, Vellore, 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 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(CS VIII)

//True Copy//

Sub Assistant Registrar

KRK

To

1. The I Additional District & Sessions Judge,
Motor Accident Claims Tribunal,
Vellore.

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

+1cc to Mr.C.Prabakaran, Advocate, S.R.No. 1014
+1cc to Mr.J.Chandran, Advocate, S.R.No.876

C.M.A.No.3173 of 2019

VBA (CO)
TE (22/04/2021)