IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.12.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1672 of 2014

1.R.Murugeshwari
2.R.Kalaiarasi (minor)
3.R.Karthick (minor)
(minors 2 and 3 rep. by their mother, 1st appellant)
4.K.Shanmugavel
5.S.Kokila ... Appellants/Claimants

Vs.

1.R.Suresh

2.IFFCO TOKIO Gen National Insurance Company Ltd.,
New No.28, Old No.195, North Usman Road,
T.Nagar,
Chennai- 600 017. ... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 09.01.2014, made in M.C.O.P. No.192 of 2012, on the file of the III Judge, Court of Small Causes, (Motor Accident Claims Tribunal), Chennai.

For Appellants : Mr.Mira Aurobindo Cumar
for M/s.A.N.Viswanatha Rao

For Respondents : Mr.J.Michael Visuvasam (For R2)

J U D G M E N T

(The matter is heard through Video Conferencing/Hybrid mode)

This Civil Miscellaneous Appeal has been filed seeking enhancement of the compensation granted by the Tribunal in the award dated 09.01.2014, made in M.C.O.P. No.192 of 2012, on the file of the III Judge, Court of Small Causes, (Motor Accident Claims Tribunal), Chennai.

2.The appellants filed M.C.O.P. No.192 of 2012, on the file of the III Judge, Court of Small Causes, (Motor Accident Claims Tribunal), Chennai, claiming a sum of Rs.10,00,000/- as compensation for the death of one S.Ravi, who died in the accident that took place on 05.04.2011.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by driver of the Mini Lorry owned by the 1st respondent and directed the 2nd respondent as insurer of the vehicle to pay a sum of Rs.7,64,000/- as compensation to the appellants.

4.Not being satisfied with the amounts granted by the Tribunal in the award dated 09.01.2014, made in M.C.O.P. No.192 of 2012, the appellants have come out with the present appeal.

5.The learned counsel appearing for the appellants contended that at the time of accident, the deceased was aged 47 years, working as a Cleaner and was earning a sum of Rs.10,000/- per month. The accident is of the year 2011. The Tribunal fixed only a meagre sum of Rs.6,000/- per month. There are 5 dependants of the deceased. The Tribunal without considering the same, erroneously deducted 1/4th towards personal expenses instead of deducting 1/3rd and awarded compensation towards pecuniary loss. The amounts awarded by the Tribunal towards loss of love and affection and loss of consortium are meagre. The Tribunal has granted compensation along with interest at the rate of 7.5% per annum. Considering the raise in cost of living, the Tribunal ought to have awarded compensation at the rate of 12% per annum. The total compensation awarded by the Tribunal under different heads are meagre and prayed for enhancement of the compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that in the absence of any proof by the appellants for the avocation and income of the deceased, the Tribunal erroneously fixed a sum of Rs.6,000/- per month as notional income. The total compensation granted by the Tribunal is not meagre. The appellants have not made out any case for enhancement of the 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 materials available on record.

8.It is the case of the appellants that at the time of accident, the deceased was aged 47 years, working as a Cleaner under one S.Sankar and was earning a sum of Rs.10,000/- per month. The appellants examined the said S.Sankar as P.W.2 to prove the same, but failed to produce any documentary evidence. In the absence of any documentary evidence by the appellants, the Tribunal fixed a sum of Rs.6,000/- per month as notional income of the deceased. The accident is of the year 2011. The monthly income fixed by the Tribunal is meagre. Considering the year of accident and nature of work done by the deceased, a sum of Rs.8,000/- per month is fixed as notional income of the deceased. There are five dependants of the deceased. The Tribunal erroneously deducted 1/3rd towards personal expenses of the deceased, instead of deducting 1/4th. Considering the age of the deceased as 47 years, the Tribunal rightly applied multiplier '13', but failed to grant any enhancement towards future prospects. As per the judgment of the Hon'ble Apex Court reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and others], the appellants are entitled to 25% enhancement towards future prospects. Thus, by fixing Rs.8,000/- per month as notional income of the deceased and granting 25% enhancement towards future prospects, the amounts awarded by the Tribunal towards pecuniary loss is modified to Rs.11,70,000/- [{Rs.8,000/- + Rs.2,000/- (25% of Rs.8,000/-)} x 12 x 13 x 3/4]. The Tribunal has excessively awarded a sum of Rs.75,000/- towards loss of consortium to the 1st appellant and Rs.25,000/- towards funeral expenses, which are liable to be reduced. Hence, the 1st appellant, who is the wife of the deceased is awarded a sum of Rs.40,000/- towards loss of consortium and the appellants are awarded a sum of Rs.15,000/- towards funeral expenses. The Tribunal has awarded a meagre sum of Rs.10,000/- each towards loss of love and affection to the appellants 2 to 5, who are the children and parents of the deceased. The same are enhanced to Rs.20,000/- each. The Tribunal failed to award any amount towards loss of estate. The appellants are entitled to a sum of Rs.15,000/- towards loss of estate. The amounts granted by the Tribunal under other conventional heads are just and reasonable and hence, the same are confirmed.

9.It is well settled that the Tribunal and the Courts have to award just compensation. Though the claimants have 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.	Pecuniary loss	6,24,000/-	11,70,000/-	Enhanced
2.	Funeral expenses	25,000/-	15,000/-	Reduced
3.	Loss of consortium to 1st appellant	75,000/-	40,000/-	Reduced
4.	Loss of love and affection to the appellants 2 to 4	40,000/-	80,000/-	Enhanced
5.	Loss of estate	-	15,000/-	Granted
	Total	7,64,000/-	13,20,000/-	Enhanced by Rs.5,56,000/-

10.In the result, the appeal is allowed and the amount awarded by the Tribunal at Rs.7,64,000/- is enhanced to Rs.13,20,000/- 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, 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.192 of 2012. On such deposit, the appellants 1, 4 and 5 are permitted to withdraw their respective share of the award amount, now determined by this Court, along with proportionate interest and costs, as per the ratio of apportionment fixed by the Tribunal, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. The shares of the minor appellants 2 and 3 are directed to be deposited in any one of the Nationalized Bank, till the minors attain majority. The 1st appellant, mother of the minor appellants 2 and 3 is permitted to withdraw the accrued interest, once in three months for the welfare of the minor appellants 2 and 3. The appellants are directed to pay the necessary court fee on the enhanced award amount. No costs.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

gsa
To

The Motor Accident Claims Tribunal,
The III Judge,
Court of Small Causes,
Chennai.

Copy to

The Section Officer,
V.R Section,
High Court, Madras.

+1cc to Mr.J.Michael Visuvasam, Advocate Sr.63543
+2cc to Mr.Ramya V. Rao, Advocate Sr.64000

C.M.A.No.1672 of 2014

rsv[co]
srg 24/01/2022