IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.03.2021

CORAM:

THE HONOURABLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.A.No.2006 of 2014

1.M.Jamuna
2.Minor.M.Sathya
3.Minor.M.Janani
K.Singarammal (since died) ...Appellants/Petitioners
(Minor appellants 2 and 3 are represented
by their mother and next friend, M.Jamuna, 1st appellant herein)

Vs.

1.K.Indira

2.Shriram General Insurance Co.Ltd.,
No.66, 2nd Floor, City Centre Complex,
Thirumalai Pillai Road, T.Nagar, Chennai-600 017.
...Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 17.03.2014 made in M.C.O.P.No.1875 of 2010 on the file of the Motor Accident Claims Tribunal, Special Sub Judge – I, Chennai.

For Appellants : Mr.N.M.Muthurajan
For R2 : Mr.Dhakshinamoorthy

JUDGMENT
(The case has been heard through video conference)

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted as per the award dated 17.03.2014 made in M.C.O.P.No.1875 of 2010 on the file of the Motor Accident Claims Tribunal, Special Sub Judge – I, Chennai.

2.The appellants are the claimants in M.C.O.P.No.1875 of 2010 on the file of the Motor Accident Claims Tribunal, Special Sub Judge – I, Chennai. They filed the above said claim petition, claiming a sum of Rs.22,00,000/- as compensation for the death of one K.Mohan, who died in the accident that took place on 07.05.2010.

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 lorry belonging to the first respondent. It directed the 2nd respondent, the insurer of the lorry to pay a sum of Rs.11,50,000/- as compensation to the appellants.

4.Not satisfied with the amounts awarded by the Tribunal, the appellants have come out with the present appeal.

5.Thiru.N.M.Muthurajan, learned counsel appearing for the appellants/claimants submitted that the appellants herein, are the claimants before the Motor Accidents Claims Tribunal. The further submission of the learned counsel for the appellant that the deceased K.Mohan was working as Turner cum Shift Supervisor in Laxmi Industries, Chennai, and earning a sum of Rs.13,800/- per month. During enquiry before the Tribunal, the claimants have produced witness regarding the avocation and income of the deceased through P.W.2 and P.W.3. He had marked Ex.P10/Authorisation letter from the owner of the Laxmi Industries, Ex.P11/Bonafide certificate given to the deceased, Ex.P-12/Copy of SSI Registration certificate of M/s.Lakshmi Industries, Ex.P.13/Copy of IT Returns submitted by M/s.Lakshmi Industries. The learned Tribunal considered the same and rejected the documents stating that it is a letter pad document and it cannot be accepted in fixing the income of the deceased Rs.7,000/- notionally and based on the same, the pecuniary loss was calculated as Rs.5,250/- X 12 X 15. Considering the ratio laid down by the Hon'ble Supreme Court in Sarla Varma's case and the same is on the lower side if notionally calculated the income could have been on the higher side. But the income calculated is on the lower side. Therefore, aggrieved by the same, the claimants have filed this appeal seeking enhancement.

6.The learned counsel appearing for the 2nd respondent/Insurance Compnay submitted that the Tribunal had rightly fixed the notional income and had arrived at a reasonable figure of Rs.11,500/- as just compensation. The arguments put forth by the learned counsel for the claimants that the documents furnished as proof of income on behalf of the deceased was not accepted by the Tribunal is to be rejected as the learned Tribunal had properly assessed the evidence. It is the further contention of the learned counsel for the claimants that as proof of income, the acquittance register maintained by the company which is registered under the Industries Act and the voucher regarding payment of salary and attendance register could have been furnished by the Manager or the owner of the company and in the absence of the same, mere certificate based on the same, the fact that the deceased was employed in the company run by the Laxmi Industries may not at all be accepted. Therefore, the same does not warrant any interference by this Court. This appeal lacks merits and is liable to be dismissed.

7.Heard the learned counsel for the appellants as well as the learned counsel appearing for the second respondent and perused the entire materials on record.

Point for consideration:

Whether appellants/claimants are entitled to enhancement?

8. The deceased died leaving his wife, mother and two minor children. He was working as a Turner cum Shift Supervisor in Laxmi Industries and he was paid a sum of Rs.13,800/- is found reasonable. At the same time, the technicalities involved in marking the documents and the same having been rejected by the Tribunal is found to be unfair since in the year 2010, Rs.10,000/- or Rs.15,000/- by a worker in and around Chennai is not an excessive amount. The learned counsel for the appellants/claimants submitted that immediately after the accident, the family had no wherewithal to pay Rs.40,000/- immediately. Therefore, he had been earning sufficient amount in that circumstances not only that he was employed for more than 28 years in the said company and those from as a Turner by avocation and drawing the income. Therefore, the Tribunal failed to appreciate the contention of the claimants who are the wife, two minor daughters and mother of the deceased. Therefore, the objections raised by the Insurance Company even though found reasonable. The tribunal or the Appellate Court cannot go into the minor technicalities regarding non production of attendance register and the acquittance and payment slips regarding the payment of salary by the company. There is proof that the company was registered under the Industries Act and having Income Tax Assessment. Therefore, for his employees it can pay Rs.34,800/-. But, still this Court does not take it for Rs.13,800/- instead it is calculated as Rs.9,000/- per month and the loss of income calculated accordingly. The deceased was aged 42 years at the time of accident and the Tribunal has not granted any amout towards future prospects of the deceased. The appellants are entitled to 25% enhancement towards future prospects. The proper multiplier applicable is '14' and the Tribunal erroneously adopted multiplier '15'. There are four dependants of the deceased and the Tribunal correctly deductd 1/4th towards personal expenses of the deceased. In view of the

above, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.14,17,500/- {Rs.9,000/- [Rs.9,000/- + Rs.2,250/- (25% of Rs.9,000/-)] X 12 X 14 X ¾}.

9.The Tribunal has awarded a sum of Rs.50,000/- towards loss of consortium to the first appellant, which is excessive and the same is reduced to Rs.40,000/-. The amounts awarded by the Tribunal towards loss of love and affection to the appellants 2 to 4 is meagre and the same is enhanced to Rs.1,20,000/-. The Tribunal has not awarded any amount towards transportation, loss of estate and damage to clothing. The appellants are entitled to a sum of Rs.10,000/- towards transportation, Rs.15,000/- towards loss of estate and Rs.1,000/- towards damage to clothing. The compensation granted under non-pecuniary heads are hereby confirmed by this Court. 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	9,45,000/-	14,17,500/-	Enhanced
2.	Loss of consortium	50,000/-	40,000/-	Reduced
3.	Loss of love and affection	1,00,000/-	1,20,000/-	Enhanced
4.	Funeral expenses	15,000/-	15,000/-	Confirmed
5.	Medical bills Ex.P6	40,000/-	40,000/-	Confirmed
6.	Transportation	-	10,000/-	Granted
7.	Loss of estate	-	15,000/-	Granted
8.	Damage to cloth	-	1,000/-	Granted
	Total	Rs.11,50,000/-	Rs.16,58,500/- rounded off Rs.16,59,000/-	enhanced by Rs.5,09,000/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.11,50,000/- is hereby enhanced to Rs.16,59,000/- 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 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 to the credit of M.C.O.P.No.1875 of 2010 on the file of the Motor Accident Claims Tribunal, Special Sub Judge - I, Chennai. On such deposit, the 1st appellant is permitted to withdraw her share of the enhanced 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 and 3 is directed to be deposited in any one of the Nationalized Bank, till the minor appellants 2 and 3 attain majority. On such deposit, the first appellant being the 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. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gbi
To

1.The Special Sub Judge - I,
Motor Accident Claims Tribunal, Chennai.

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

+1 CC to Mr.S.Dhakshinamoorthy, Advocate sr 15726

C.M.A.No.2006 of 2014

GP(CO)
SP(07/01/2022)