



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.12.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2131 of 2014

1.S.Saraswathy
2.S.Mahesh

Savithri (died)

.. Appellants

Vs.

1.K.P.Mani
2.P.Aravindkumar

3.M/s.National Insurance Co. Ltd.
No.74-A, Paramathy Road
Namakkal, Tamil Nadu
Pin-637 001.

4.A.Chandran

5.A.Duraisamy

6.Amirtham

7.A.Balasubramaniam

.. Respondents

(Respondents 4 to 7 are not necessary parties
as per order in MCOP)

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 06.10.2012 made in M.C.O.P.No.952 of 2010 on the file of Motor Accident Claims Tribunal, IV Additional District Court, Coimbatore.

For Appellants : Mr.M.Jaisingh
for Mr.A.Sivaji

For R3 : Mr.S.Arunkumar

For RR1, 2 and 4 to 7 : No appearance



J U D G M E N T

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 06.10.2012 made in M.C.O.P.No.952 of 2010 on the file of Motor Accident Claims Tribunal, IV Additional District Court, Coimbatore.

2.The appellants are claimants in M.C.O.P.No.952 of 2010 on the file of Motor Accident Claims Tribunal, IV Additional District Court, Coimbatore. They filed the said claim petition claiming a sum of Rs.50,00,000/- as compensation for the death of one A.Selvaraj, who died in the accident that took place on 16.10.2009.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the 1st respondent, driver of the lorry belonging to the 2nd respondent and directed the 3rd respondent/Insurance Company being insurer of the said lorry to pay a sum of Rs.5,68,500/- as compensation to the appellants. The Tribunal did not grant any compensation to the respondents 4 to 7, who are brothers and sister of the deceased Selvaraj, as they are not dependants of the deceased.

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 the deceased was working as a Supervisor in Mahesh Spinners at the time of accident and was earning a sum of Rs.12,000/- per month and in addition to that, he was earning a sum of Rs.25,000/- per month by doing agricultural work. The Tribunal without considering the same, fixed a sum of Rs.1,00,000/- per annum as notional income of the deceased. The deceased was aged 52 years at the time of accident. As per the judgment of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC Supreme Court (Sarla Verma vs. Delhi Transport Corporation), the multiplier should be '9'. The Tribunal erred in applying multiplier '8'. The Tribunal did not grant any enhancement towards future prospects. The amounts awarded by the Tribunal towards loss of consortium, loss of love and affection and funeral expenses are meagre and prayed for enhancement of compensation.

6.Per contra, the learned counsel appearing for the 3rd respondent/Insurance Company contended that the Tribunal after



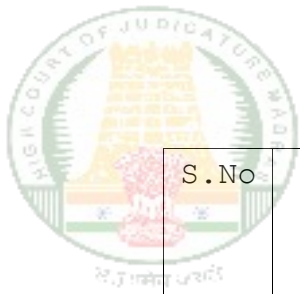
considering all the materials on record, has awarded compensation, which is not meagre. The appellants have not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

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7. Though notice has been served on the respondents 1, 2 and 4 to 7 and their names are printed in the cause list, there is no representation for them either in person or through counsel.

8. Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the 3rd respondent/Insurance Company and perused the entire materials available on record.

9. It is the contention of the appellants that the deceased was working as a Supervisor in Mahesh Spinners at the time of accident and was earning a sum of Rs.12,000/- per month. In addition to that, the deceased was earning a sum of Rs.25,000/- per month by doing agricultural work. To prove their contention, the appellants have marked income tax return as Ex.P19 and salary certificate as Ex.P22. The Tribunal did not accept the documents Ex.P19 and Ex.P22 as they have failed to produce and mark the attendance register maintained by spinning mill. The Tribunal further held that after the death of deceased, his family members would have cultivated the agricultural land, earned money and there is no loss of income and therefore, fixed a sum of Rs.1,00,000/- per annum as notional income of the deceased, which is in order. The Tribunal did not grant any enhancement towards future prospects. The deceased was aged 58 years at the time of accident. The appellants are entitled to 10% enhancement towards future prospects. The Tribunal applied multiplier '8', which is not correct. As per the judgment of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC (Sarla Verma vs. Delhi Transport Corporation), the correct multiplier applicable is '9'. By deducting 1/3rd towards personal expenses, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.6,60,000/- (Rs.1,00,000/- + 10,000 [Rs.1,00,000/- X 10%] X 9 X 2/3). The sum of Rs.5,000/- each awarded by the Tribunal towards loss of consortium and funeral expenses are meagre and hence, the same are hereby enhanced to Rs.40,000/- and Rs.15,000/- respectively. The Tribunal has not awarded any amount towards loss of estate and hence, a sum of Rs.15,000/- is awarded towards loss of estate. The amounts awarded by the Tribunal under all other heads are just and reasonable and hence, the same are hereby confirmed. 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 or reduced
1.	Loss of dependency	5,36,000	6,60,000	Enhanced
2.	Loss of love and affection	10,000	10,000	Confirmed
3.	Loss of consortium	5,000	40,000	Enhanced
4.	Funeral expenses	5,000	15,000	Enhanced
5.	Transportation	5,000	5,000	Confirmed
6.	Medical expenses	7,500	7,500	Confirmed
7.	Loss of estate	-	15,000	Granted
	Total	5,68,500	7,52,500	Enhanced by Rs.1,84,000/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.5,68,500/- is hereby enhanced to Rs.7,52,500/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 3rd 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. On such deposit, the appellants are permitted to withdraw their respective share of the award amount now determined by this Court as per the apportionment fixed by the Tribunal along with proportionate interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar



Kj

To

1.IV Additional District Judge
(Motor Accident Claims Tribunal)
Coimbatore.

+lcc to Mr.A.Sivaji, Advocate SR.No.65871

C.M.A.No.2131 of 2014

VSN II (CO)
GN (16/02/2022)