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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.01.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.3789 OF 2019

1.M.Dhanam
2.M.Amutha
3.M.Chandrasekaran

.. Appellants/
Petitioners 1 to 3

Vs.

1.S.P.Jeyam

2.M/s.Reliance General Insurance Co. Ltd.
Sri Lakshmi complex, 1st floor
Bharathi street, Omalur main road
Swarnapuri, Salem-636 211.

.. Respondents/
Respondents

Prayer:

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 18.01.2017 made in M.C.O.P.No.934 of 2014 on the file of Motor Accident Claims Tribunal, Principal District Court, Namakkal.

For Appellants : Mr.A.Sathish Kumar
for Mr.C.Thangaraju

For R1 : No appearance

For R2 : Mrs.C.Bhuvanasundari

J U D G M E N T

This matter is heard through 'Video-conferencing'.

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 18.01.2017 made in M.C.O.P.No.934 of 2014 on the file of Motor Accident Claims Tribunal, Principal District Court, Namakkal.

2.The appellants are claimants in M.C.O.P.No.934 of 2014 on



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the file of Motor Accident Claims Tribunal, Principal District Court, Namakkal. They filed the said claim petition claiming a sum of Rs.15,00,000/- as compensation for the death of one Murugesan, who died in the accident that took place on 11.08.2014.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the 1st respondent, the rider-cum-owner of the motorcycle and directed the 2nd respondent/ Insurance Company being insurer of the said motorcycle to pay a sum of Rs.8,44,276/- as compensation to the appellants.

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 working as a tea master and was earning a sum of Rs.10,500/- per month. The Tribunal without considering the same, fixed only a meagre sum of Rs.6,000/- per month as notional income of the deceased. The deceased was aged 48 years at the time of accident. The Tribunal failed to award any enhancement towards future prospects. The Tribunal ought to have awarded 25% enhancement towards future prospects. The Tribunal has not awarded any compensation towards loss of consortium and loss of love and affection. The amounts awarded by the Tribunal towards transportation, loss of estate and funeral expenses are meagre and prayed for enhancement of compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the appellants failed to produce any document to prove the age, avocation and income of the deceased. In the absence of any material evidence to prove the income of the deceased, the Tribunal fixed a sum of Rs.6,000/- per month as notional income of the deceased, which is not meagre. The total compensation awarded by the Tribunal under different heads are not meagre. The appellants have not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

7. Though notice has been served on the 1st respondent and his name is printed in the cause list, there is no representation for the 1st respondent either in person or through counsel.

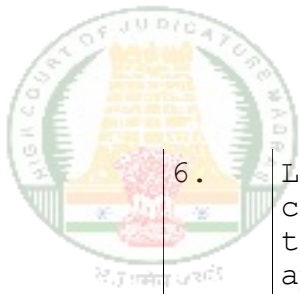
8. Heard the learned counsel appearing for the appellants as



well as the 2nd respondent/Insurance Company and perused the entire materials available on record.

9. From the materials on record, it is seen that it is the contention of the appellants that at the time of accident, the deceased was working as a tea master and was earning a sum of Rs.10,500/- per month. The appellants have failed to substantiate the said contention. In the absence of any material evidence with regard to avocation and income of the deceased, the Tribunal fixed a sum of Rs.6,000/- per month as notional income of the deceased, which is meagre. The accident is of the year 2014 and hence, a sum of Rs.8,500/- per month is fixed as notional income of the deceased. The Tribunal has not granted any enhancement towards future prospects. The deceased was aged 48 years at the time of accident as per Ex.P10/post-mortem certificate. As per the judgment of the Hon'ble Apex Court reported in 2017 (2) TNMAC 609 (SC) (National Insurance Company v. Pranay Sethi), the appellants are entitled to 25% enhancement towards future prospects. The Tribunal applied multiplier '13' and deducted 1/3rd towards personal expenses, which are proper. Thus, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.11,05,000/- (Rs.8,500/- + 2125 [Rs.8,500/- X 25%] X 12 X 13 X 2/3). The Tribunal has not awarded any compensation towards loss of consortium to the 1st appellant. Hence, a sum of Rs.40,000/- is awarded towards loss of consortium to the 1st appellant. The amounts awarded by the Tribunal towards transportation, funeral expenses and loss of estate are meagre and hence, the same are hereby enhanced to Rs.5,000/-, Rs.15,000/- and Rs.15,000/- respectively. The Tribunal has awarded a sum of Rs.2,20,276/- towards medical expenses as per Ex.P20 and hence the same is 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 or reduced
1.	Loss of dependency	6,24,000	11,05,000	Enhanced
2.	Loss of estate	3,000	15,000	Enhanced
3.	Funeral expenses	5,000	15,000	Enhanced
4.	Transportation	2,000	5,000	Enhanced
5.	Medical bills	2,20,276	2,20,276	Confirmed



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6.	Loss of consortium to the 1 st appellant	-	40,000	Granted
	Total	8,54,276 Tribunal awarded 8,44,276	14,00,276	Enhanced by Rs.5,56,000/-

Though the Tribunal arrived at a sum of Rs.8,54,276/-, awarded only a sum of Rs.8,44,276/- as compensation to the appellants.

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.8,44,276/- is hereby enhanced to Rs.14,00,276/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellants are directed to pay necessary Court fee, if any, on the enhanced compensation. It is made clear that the appellants are not entitled for any interest for the delay period on the amount of Rs.5,56,000/- enhanced by this Court as per the order of this Court dated 19.09.2019 made in C.M.P.No.19065 of 2019 in C.M.A.SR.No.75509 of 2019. 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. 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(Audit)

//True Copy//

Sub Assistant Registrar

kj

To

1. The Principal District Judge
Motor Accident Claims Tribunal
Namakkal.



2. The Section Officer,
V.R.Section,
High Court, Chennai.

+2ccs to Mr.C.Thangaraju, Advocate, S.R.No.4434

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KK (CO)
CS/09/09/2021