

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.01.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3105 of 2019

Tak Singh (died)

1.Gowri

2.Mohan Singh

3.Chandra Devi

4.Khansi

.. Appellants/Petitioners

Vs.

1.Senthil Kumar

2.The United India Insurance Company Limited,
Divisional Office,
Having its office at
No.73-C, M.T.H. Road,
Ambattur,
Chennai - 600 053.

.. Respondents/Respondents

(R1 remained exparte before Tribunal.
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 09.03.2018 made in M.C.O.P.No.410 of 2015 on the file of the Motor Accident Claims Tribunal, IV Additional District Court, Thiruvallur @ Ponneri.

For Appellants : Mr.F.Terry Chella Raja
for Mr.K.M.Ramesh

For R2 : Mr.M.J.Vijayaraghavan

WEB COPY
J U D G M E N T

The matter is heard through "Video Conferencing".

2.This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated

Page numbers

09.03.2018 made in M.C.O.P.No.410 of 2015 on the file of the Motor Accident Claims Tribunal, IV Additional District Court, Ponneri.

3.The appellants are the claimants in M.C.O.P.No.410 of 2015 on the file of the Motor Accident Claims Tribunal, IV Additional District Court, Ponneri. They filed the above said claim petition, claiming a sum of Rs.9,00,000/- as compensation for the death of one Nimitha, who died in the accident that took place on 02.07.2012.

4.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the rider of the motorcycle belonging to the 1st respondent and directed the 2nd respondent-Insurance Company to pay a sum of Rs.7,63,000/- as compensation to the appellants.

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 45 years, working as Coolie in L&T Road Contract and was earning a sum of Rs.400/- per day. But the Tribunal fixed a meagre sum of Rs.5,500/- as monthly income of the deceased. The deceased was aged 45 years at the time of accident and the Tribunal has not granted any enhancement towards future prospects of the deceased. The amounts awarded by the Tribunal under other heads are meagre and prayed for enhancement of compensation.

7.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the appellants 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.5,500/- per month fixed by the Tribunal as notional income of the deceased is not meagre. The Tribunal considering the entire materials on record, awarded a sum of Rs.6,93,000/- 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.

Page numbers

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 45 years, working as Coolie in L&T Road Contract and was earning a sum of Rs.400/- per day. 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.5,500/- per month as notional income of the deceased. The accident occurred in the year 2012 and 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.9,000/- per month is fixed as notional income of the deceased. The deceased was aged 45 years at the time of accident. The Tribunal has not granted any enhancement towards future prospects. As per the judgment of the Hon'ble Apex Court reported in 2017 (2) TNMAC 609 (SC), [National Insurance Company Limited Vs. Pranay Sethi and others], the appellants are entitled to 25% enhancement towards future prospects of the deceased. The Tribunal has rightly adopted multiplier '14' as per the judgment of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC Supreme Court, [Sarla Verma & others Vs. Delhi Transport Corporation & another]. There are four dependants of the deceased and the Tribunal has rightly deducted 1/4th towards personal expenses of the deceased. Thus, the amount awarded by the Tribunal towards loss of dependency is modified to Rs.14,17,500/- {Rs.11,250/- [(Rs.9,000/- + Rs.2,250/- (25% of Rs.9,000/-)) x 12 x 14 x 3/4]}. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are hereby confirmed.

10. It is well settled that the Tribunal and the Courts have to award just compensation. Though the claimant has 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.	Loss of dependency	6,93,000/-	14,17,500/-	Enhanced
2.	Loss of love and affection	40,000/-	40,000/-	Confirmed
3.	Funeral expenses	15,000/-	15,000/-	Confirmed

Page numbers

4.	Loss of estate	15,000/-	15,000/-	Confirmed
	Total	Rs.7,63,000/-	Rs.14,87,500/-	Enhanced by Rs.7,24,500/-

11. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.7,63,000/- is hereby enhanced to Rs.14,87,500/- 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.410 of 2015 on the file of the Motor Accident Claims Tribunal, IV Additional District Court, Ponneri. 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. The appellants are directed to pay the necessary Court fee for the enhanced amount of compensation. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

krk

To

1.The IV Additional District Judge,
Motor Accident Claims Tribunal,
Ponneri.

Copy to:

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

+1cc to Mr.K.M.Ramesh, Advocate SR.982

C.M.A.No.3105 of 2019

VBA(CO)
CB(12/02/2021)

Page numbers