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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3318 of 2014

1.N.Amutha

2.N.Senthil Kumar

3.N.Gomathi

4.N.Shanthi

5.N.Manjula

..Appellants/Petitioners

Vs.

1. R.Kamaleswari

(R1 remained exparte in the Trial Court.
Hence, notice to R1 dispensed with)

2. The New India Assurance Company Limited,
No.4, Muthulingam Reddy Street,
Tambaram (West),
Chennai - 600 045.

..Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 24.02.2014 made in M.C.O.P.No.3840 of 2009 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.I dealing with M.C.O.P. Cases, Chennai.

For Appellants : Mr.M.Mahendran
for Mr.N.M.Muthurajan

For R1 : No appearance

For R2 : Mr.P.G.Padmanabhan

J U D G M E N T

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

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the Tribunal in the award dated 24.02.2014 made in M.C.O.P.No.3840 of 2009 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.I dealing with M.C.O.P. Cases, Chennai.



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2.The appellants are the claimants in M.C.O.P.No.3840 of 2009 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.I dealing with M.C.O.P. Cases, Chennai. They filed the above said claim petition, claiming a sum of Rs.8,00,000/- as compensation for the death of one M.Narayanan, who died in the accident that took place on 10.09.2009.

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 van belonging to 1st respondent and directed the 2nd respondent-Insurance Company to pay a sum of Rs.6,20,500/- as compensation to the appellants at the first instance and recover the same from the 1st respondent - owner of the van.

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 Mason and was earning a sum of Rs.400/- per day. But, the Tribunal has fixed a meagre sum of Rs.4,500/- per month as notional income of the deceased. The deceased was aged 52 years at the time of accident but the Tribunal fixed the age of the deceased at 55 years. The Tribunal has not granted any enhancement towards future prospects. The amounts awarded by the Tribunal under conventional heads are meagre and prayed for enhancement of compensation.

6.Per contra, learned counsel appearing for the 2nd respondent-Insurance Company contended that the appellants failed to prove the avocation and income of the deceased by acceptable evidence. In the absence of any acceptable evidence, a sum of Rs.4,500/- per month fixed by the Tribunal as notional income of the deceased is not meagre. The Tribunal has awarded excessive amount of Rs.1,20,000/- towards loss of love and affection and hence, the appellants are not entitled to any enhancement towards future prospects. 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 her name is printed in the cause list, there is no representation for her, either in person or through counsel.

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.

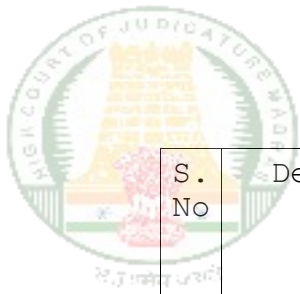
9.It is the case of the appellants that at the time of



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accident the deceased was working as Mason and was earning a sum of Rs.400/- per day. But, the appellants have not produced any documentary evidence to prove the avocation and income of the deceased. In the absence of any material evidence to prove the avocation and income of the deceased, the Tribunal fixed a sum of Rs.4,500/- per month as notional income of the deceased. The accident is of the year 2009 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.6,500/- per month is fixed as notional income of the deceased. It is the further case of the appellants that the deceased was aged 52 years at the time of accident. But, the appellants have not produced any documents to prove the age of the deceased. As per Ex.P3/Postmortem Certificate and Ex.P4/Death Report, the deceased was aged 55 years. The Tribunal rightly fixed the age of the deceased as 55 years as per Exs.P3 & P4. The Tribunal, following the judgment of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC Supreme Court, [Sarala Verma & others Vs. Delhi Transport Corporation & another] rightly applied multiplier '11'. The deceased was aged 55 years at the time of accident but 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 10% enhancement towards future prospects. The dependants are five in numbers and the Tribunal has rightly deducted $1/4^{\text{th}}$ towards personal expenses of the deceased. Thus, by fixing a sum of Rs.6,500/- as monthly income and granting 10% enhancement towards future prospects, the compensation awarded by the Tribunal towards pecuniary loss is modified to Rs.7,07,850/- {Rs.7,150/- [Rs.6,500/- + Rs.650/- (10% of Rs.6,500/-)] X 12 X 11 X $\frac{3}{4}$ }. The amounts awarded by the Tribunal towards loss of consortium, loss of love and affection and funeral expenses are just and reasonable and hence, the same are hereby confirmed. The Tribunal has not awarded any amount towards loss of estate. The appellants are entitled to a sum of Rs.15,000/- towards loss of estate.

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.	Pecuniary loss	4,45,500/-	7,07,850/-	Enhanced
2.	Loss of consortium to 1 st appellant	40,000/-	40,000/-	Confirmed
3.	Loss of love and affection to appellants 2 to 5	1,20,000/-	1,20,000/-	Confirmed
4.	Funeral expenses	15,000/-	15,000/-	Confirmed
5.	Loss of estate	-	15,000/-	Granted
	Total	Rs.6,20,500/-	Rs.8,97,850/-	Enhanced by Rs.2,77,350/-

11. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.6,20,500/- is hereby enhanced to Rs.8,97,850/- 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.3840 of 2009 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.I dealing with M.C.O.P. Cases, Chennai, at the first instance and recover the same from the 1st respondent - owner of the van. 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

//True Copy//

Sub Assistant Registrar

krk



To

1. The Special Subordinate Judge No.I,
(Dealing with M.C.O.P. Cases),
Motor Accident Claims Tribunal,
Chennai.

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

+1cc to Mr.N.M.Muthurajan, Advocate, S.R.No.66359

+1cc to Mr.P.G.Padmanabhan, Advocate, S.R.No.66293

C.M.A.No.3318 of 2014

AK-II (CO)
RGA (31/01/2022)