



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3420 of 2014

1.P.Ganapathy
2.Bhavani
3.Gomathi

.. Appellants/Petitioner

Vs.

1.R.Murugan
(R1 set exparte before the trial Court)

2.Cholamandalam MS General
Insurance Company Limited
NSC Bose Road, Chennai-1.

.. Respondents /Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 19.04.2013 made in M.C.O.P.No.4325 of 2011 on the file of Motor Accident Claims Tribunal, III Small Causes Court, Chennai.

For Appellants : Mr.N.M.Elumalai

For R2 : Mr.E.Rajadurai
for M/s.M.B.Gopalan Associates

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 19.04.2013 made in M.C.O.P.No.4325 of 2011 on the file of Motor Accident Claims Tribunal, III Small Causes Court, Chennai.

2.The appellants are claimants in M.C.O.P.No.4325 of 2011 on the file of Motor Accident Claims Tribunal, III Small Causes Court, Chennai. They filed the said claim petition claiming a sum of Rs.20,00,000/- as compensation for the death of one Shanmugam, who died in the accident that took place on 13.09.2010.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by driver of TATA Ace vehicle



belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said TATA Ace vehicle to pay a sum of Rs.10,24,500/- as compensation to the appellants 1 and 2, who are father and mother of the deceased. The Tribunal did not grant any compensation to the 3rd respondent, who is sister of the deceased Shanmugam, as she is not legal heir 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 Collection and Sales Executive in Rosman Communication at the time of accident and was earning a sum of Rs.10,750/- per month. To prove the same, the appellants have examined P.W.3, employer of the deceased and marked documents. The Tribunal without considering the same, fixed a sum of Rs.7,500/- per month as notional income of the deceased. The deceased was aged 21 years at the time of accident. The Tribunal has granted only 30% enhancement towards future prospects. The amounts awarded by the Tribunal towards 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 2nd respondent/Insurance Company contended that the Tribunal after considering all the materials on record, 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.

7. 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 available on record.

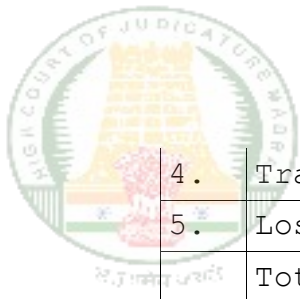
8. It is the contention of the appellants that the deceased was working as a Collection and Sales Executive in Rosman Communication at the time of accident and was earning a sum of Rs.10,750/- per month. The appellants examined one Niyaz Ahmed, employer of the deceased as P.W.3 to prove the avocation and income of the deceased. P.W.3 deposed to that effect and through him, appointment order of the deceased was marked as Ex.P9. The Tribunal did not accept the evidence of P.W.3, Ex.P9/appointment order and the contention of the appellants that the deceased was earning a sum of Rs.10,750/- per month as



WEB COPY

the appellants failed to mark any salary certificate and other documents with regard to monthly income of the deceased. The said reasoning of the Tribunal is valid. In the absence of any material evidence with regard to monthly income of the deceased, the Tribunal fixed a sum of Rs.7,500/- per month as notional income of the deceased. The accident is of the year 2010. Hence, a sum of Rs.9,000/- per month is fixed as notional income of the deceased. The deceased was aged 21 years at the time of accident as per Ex.P8/driving license of the deceased. The Tribunal has granted 30% enhancement towards future prospects and applied multiplier '17', which are not correct. As per the judgment of the Hon'ble Apex Court reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and others], the appellants are entitled to 40% enhancement towards future prospects. 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 '18'. The deceased died as bachelor and the Tribunal has rightly deducted 50% towards personal expenses. Thus, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.13,60,800/- (Rs.9,000/- + 3600 [Rs.9,000/- X 40%] X 12 X 18 X 1/2). The sum of Rs.10,000/- each awarded by the Tribunal towards loss of love and affection to the appellants 1 and 2 and Rs.10,000/- awarded by the Tribunal towards funeral expenses are meagre and hence, the same are hereby enhanced to Rs.40,000/- each and Rs.15,000/- respectively. The Tribunal has not awarded any amounts towards transportation and loss of estate and hence, Rs.5,000/- and Rs.15,000/- are awarded towards transportation and loss of estate respectively. Thus, the compensation awarded by the Tribunal is modified as follows:

S.N o	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Loss of dependency	9,94,500	13,60,800	Enhanced
2.	Loss of love and affection to the appellants 1 and 2	20,000	80,000	Enhanced
3.	Funeral expenses	10,000	15,000	Enhanced



WEB COPY

4.	Transportation	-	5,000	Granted
5.	Loss of estate	-	15,000	Granted
	Total	10,24,500	14,75,800	Enhanced by Rs.4,51,300/ -

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.10,24,500/- is hereby enhanced to Rs.14,75,800/- 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. On such deposit, the appellants 1 and 2 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-IV)

//True Copy//

Sub Assistant Registrar

Kj

To

1.The Motor Accident Claims Tribunal
III Judge, Small Causes Court,
Chennai.

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

+1cc to Mr.N.M.Elumalai, Advocate SR.No.66414

C.M.A.No.3420 of 2014

RP(CO)
GN(06/01/2022)