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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 26.02.2021

Pronounced on : 25.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.A.No.468 of 2014

1.U.Anitha
2.D.Jaya Prasad (minor)
3.U.Teenu Priya (minor)
(Minors 2 & 3 are represented by
next friend mother U.Anitha, 1st appellant herein)
4.K.Malliga .. Appellants / Claimants

Vs.

1.G.Kuppusamy
(Remained ex-parte before the Tribunal)
2.Royal Sundaram Alliance Insurance Co.Ltd.,
No.46, Whites Road,
Royapettah, Chennai - 600 014. .. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 30.09.2013 in M.C.O.P.No.3736 of 2011 on the file of the Motor Accident Claims Tribunal, Chief Judge, Small Causes Court, Chennai.

For Appellants : Mr.R.Kalaiarasan

For R2 : Mr.N.Vijayaraghavan

JUDGMENT

(The case has been heard through video conference)

The Civil Miscellaneous Appeal has been filed by the



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appellants seeking enhancement of compensation granted by the Tribunal in the award dated 30.09.2013 in M.C.O.P.No.3736 of 2011 on the file of the Motor Accident Claims Tribunal, Chief Judge, Small Causes Court, Chennai.

2.The appellants are claimants before the Tribunal in M.C.O.P.No.3736 of 2011 on the file of the Motor Accident Claims Tribunal, Chief Judge, Small Causes Court, Chennai. They filed the said claim petition claiming a sum of Rs.16,00,000/- as compensation for the death of one K.Umapathy, who died in the accident that took place on 16.06.2011.

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 Tata Ace Magic belonging to the 1st respondent and directed both the respondents 1 and 2, jointly and severally, to pay a sum of Rs.9,17,400/- as compensation to the appellant/claimant.

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 self employed as building contractor and maistry and was earning a sum of Rs.1,000/- per day at the time of the accident, but the Tribunal has fixed a meagre sum of Rs.4,500/- per month as notional income of the deceased. The deceased was aged 32 years at the time of the accident. However, the Tribunal has added only 30% towards future prospects. The amounts awarded by the Tribunal under different heads 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 have not filed any documents to prove the avocation and income of the deceased. In the absence of any material evidence, the Tribunal has fixed Rs.4,500/- per month as notional income of the deceased 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 appellant

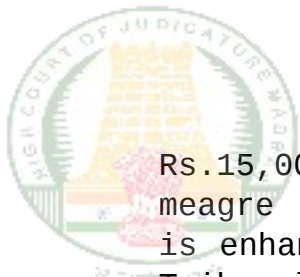


as well as the learned counsel appearing for the 2nd respondent/Insurance Company and perused the materials available on record.

Point for consideration:

Whether the claimant before the learned Tribunal, Chennai, is entitled to enhancement of compensation?

8. From the materials available on record, it is seen that the appellants have contended that the deceased was working as a building contractor and maistry and was earning a sum of Rs.1,000/- per day at the time of the accident. To prove his avocation and income, they have filed bank pass book as Ex.P7/Andhra Bank pass book of the deceased and Ex.P8/Indian Bank pass book of the deceased. But the income of the deceased was not clearly stated in the said pass books. P.W.3 / co-worker of the deceased was examined to prove the same. Except oral evidence, the appellants have failed to produce any document to prove the income of the deceased. In the absence of any material evidence, the Tribunal has fixed notional income of the deceased at Rs.4,500/- per month (Rs.150/- per day X 30 days) and the same is meagre. The accident is of the year 2011. A sum of Rs.9,000/- per month (Rs.300/- X 30 days) is fixed as monthly income of the deceased. Considering Ex.P1 / FIR and Ex.P3 / driving licence, the Tribunal has fixed the age of the deceased as 32 years at the time of accident. However, the Tribunal has added only 30% towards future prospects. The appellants are entitled to 40% towards future prospects. Since dependents are 4 in numbers, the Tribunal has rightly deducted 1/4th towards the personal expenses of the deceased. The deceased was aged 32 years at the time of the accident and hence, the Tribunal rightly applied multiplier '16'. The amount granted by the Tribunal towards loss of dependency is modified to Rs.18,14,400/- (Rs.9,000/- + 3,600 (Rs.9,000/- x 40%) 12 x 16 x 3/4). The Tribunal has awarded only a sum of Rs.25,000/- towards loss of consortium to 1st appellant and the same is enhanced to Rs.40,000/-. The Tribunal awarded a sum of Rs.25,000/- towards loss of love and affection is meagre. This Court awarded a sum of Rs.1,20,000/- towards loss of love and affection to the appellants 2 to 4. The Tribunal has granted a sum of Rs.10,000/-, Rs.10,000/- towards loss of estate and funeral expenses and the same are meagre. The appellants are entitled to a sum of Rs.40,000/- towards loss of estate and



Rs.15,000/- towards funeral expenses. The Tribunal has awarded a meagre amount of Rs.5,000/- towards transportation and the same is enhanced to Rs.10,000/-. Thus the compensation awarded by the Tribunal is modified as follows:

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9.It is well settled that the Tribunals and the Courts have to award just compensation. Though the claimants have 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	8,42,400	18,14,400	Enhanced
2.	Loss of love & affection to the appellants 2 to 4	25000	1,20,000	Enhanced
3.	Loss of consortium to the 1 st appellant	25000	40000	Enhanced
4.	Loss of estate	10000	40000	Enhanced
5.	Funeral expenses	10000	15000	Enhanced
6.	Transportation	5000	10000	Enhanced
	Total	Rs.9,17,400/-	Rs.20,39,400/-	Enhanced by Rs.11,22,000/-

10.Accordingly, point for consideration is answered in favor of the appellants/claimants and in the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.9,17,400/- is hereby enhanced to Rs.20,39,400/- 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 the Court fee, if any on the enhanced amount of compensation. Both the 1st respondent/owner of



the vehicle as well as the 2nd respondent/Insurance Company are jointly and severally 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 1 and 4 are permitted to withdraw their respective share of the enhanced award amount 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 share of the minors, namely the appellants 2 and 3 are directed to be deposited in any one of the Nationalized Banks, till the minors/appellants 2 and 3 attain majority. On such deposit, the first appellant, being the mother of the minors, appellants 2 and 3, is permitted to withdraw the accrued interest once in three months for the welfare of the minors/appellants 2 and 3. No costs.

Sd/-

Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

gbi

To

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

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

+1cc to Mr.N.M.Muthurajan, Advocate, S.R.No.19896

C.M.A.No.468 of 2014

LN(CO)
SB(11/10/2021)