



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.07.2021

CORAM:

THE HONOURABLE TMT.JUSTICE S.KANNAMMAL

C.M.A.No.1730 of 2020

1.Gowthami
2.Minor. Harikrishnan
(Minor 2nd appellant is represented by next friend/
mother 1st appellant Gowthami)
3.Lakshmi
4.Natesan

..Appellants/Petitioners

Vs.

1.Shanthoshkumar

2.The National Insurance Company Limited,
Divisional Office No.2,
Ramakrishna Road, Salem - 636 016.

..Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 16.12.2019 made in M.C.O.P.No.2299 of 2016, on the file of the Motor Accidents Claims Tribunal, Special District Court, Salem.

For Appellants :Mr.S.P.Yuaraj
For R2 :Mr.J.Chandran

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 16.12.2019 made in M.C.O.P.No.2299 of 2016, on the file of the Motor Accidents Claims Tribunal, Special District Court, Salem.

2.The appellants are the claimants in M.C.O.P.No.2299 of 2016, on the file of the Motor Accidents Claims Tribunal, Special District Court, Salem. The appellants are wife, son,



mother and father of the deceased. They filed the above said claim petition, claiming a sum of Rs.25,00,000/- as compensation for the death of Praveen, who died in the accident that took place on 25.09.2016.

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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 Dipper Lorry belonging to the 1st respondent and directed the 1st respondent and 2nd respondent-Insurance Company, jointly and severally, to pay a sum of Rs.17,83,600/- 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 aged 25 years, working as lorry driver at Marutham Transport Sankari and was earning a sum of Rs.15,000/- per month. But, the Tribunal has fixed a meagre sum of Rs.9,000/- per month as notional income of the deceased. The Tribunal failed to award any compensation towards loss of love and affection to the appellants 2 to 4 and Transport expenses 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 producing valid documents. In the absence of any material evidence with regard to avocation and income, a sum of Rs.9,000/- per month fixed by the Tribunal as notional income of the deceased is not meagre. The Tribunal after considering all the records in proper perspective, rightly awarded just compensation. The appellants have not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

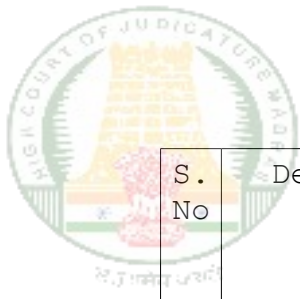
7.Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the 2nd respondent-Insurance Company and perused the entire materials on record.

8.It is the case of the appellants that at the time of accident the deceased was aged 25 years, working as lorry driver at Marutham Transport Sankari and was earning a sum of Rs.15,000/- per month. Except oral evidence, the appellants have not filed any document to prove the avocation and income of the deceased. In the absence of any valid document with regard to



avocation and income, the Tribunal considering the age and nature of work done by the deceased, fixed a sum of Rs.9,000/- per month as notional income of the deceased. The accident is of the year 2016 and the cost of living has increased enormously. Hence, a sum of Rs.11,000/- per month is fixed as notional income of the deceased. The Tribunal following the judgment of the Hon'ble Apex Court reported in 2017 (2) TN MAC 609 [National Insurance Company Limited Vs. Pranay Sethi and others], rightly granted 40% compensation towards future prospects. The Tribunal has erroneously deducted 1/3rd towards personal expenses of the deceased and applied multiplier '17'. Considering the dependents of the deceased and age of the deceased, 1/4th is to be deducted towards personal expenses and multiplier '18' is to be applied. Thus the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.24,94,800/- {Rs.11,000/- + 4,400 (40% of Rs.11,000/-)} X 12 X 18 X 3/4}. The Tribunal failed to award any Compensation towards loss of love and affection to the appellants 2 to 4 and transport expenses. A reasonable sum of Rs.40,000/- each is granted towards loss of love and affection and Rs.15,000/- is granted towards transport expenses. This Court is of the considered view that the amounts awarded by the Tribunal towards loss of consortium, funeral expenses and loss of estate are just and reasonable and hence, the same are 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
1.	Loss of dependency	17,13,600/-	24,94,800/-	Enhanced
2.	Loss of consortium	40,000/-	40,000/-	Confirmed
3.	Funeral expenses	15,000/-	15,000/-	Confirmed
4.	Loss of estate	15,000/-	15,000/-	Confirmed
5.	Loss of love and affection to the appellants 2 to 4 (Rs.20,000/- each)	-	1,20,000/-	Granted
6.	Transport	-	15,000/-	Granted



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S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
	expenses			
	Total	Rs.17,83,600/-	Rs.26,99,800/-	Enhanced by Rs.9,16,200/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.17,83,600/- is hereby enhanced to Rs.26,99,800/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. Both the 1st respondent and 2nd respondent-Insurance Company are directed to deposit the award amount now determined by this Court, jointly and severally, 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.2299 of 2016, on the file of the Motor Accidents Claims Tribunal, Special District Court, Salem. On such deposit, the appellants 1, 3 & 4 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 share of the minor 2nd appellant is directed to be deposited in any one of the Nationalized Banks, till the minor 2nd appellant attains majority. On such deposit, the 1st appellant, being the Mother of the minor 2nd appellant is permitted to withdraw the accrued interest once in three months for the welfare of the minor 2nd appellant. The appellants are directed to pay the necessary Court fee on the enhanced amount of compensation now determined by this Court. No costs.

Sd/-

Assistant Registrar

// True Copy//

Sub Assistant Registrar

mpa



To

1.The Special District Judge,
Motor Accident Claims Tribunal,
Salem.

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

+1 CC to Mr.S.P.Yuaraj, Advocate sr 36522
+1 CC to Mr.J.Chandran, Advocate sr 37001.

C.M.A.No.1730 of 2020

LN(CO)
SP(23/11/2021)