



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.01.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2005 of 2020

1.Santhi Sagayameri
2.Benignus
3.Boopal
4.Pasteena

.. Appellants/Petitioners

Vs.

1.Murugan

2.The United India Insurance Company Ltd.
TP HUB, Peramanur main road
Puduchampalli, Ramnagar post
Mettur Dam, Salem-7.

.. Respondents/Respondents 1 & 2

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 07.03.2019 made in M.C.O.P.No.1593 of 2018 on the file of Motor Accident Claims Tribunal, II Additional District Court, Salem.

For Appellants : Mr.S.P.Yuaraj

For R2 : Mr.A.Dhiraviyanathan

J U D G M E N T

This matter is heard through 'Video-conferencing'.

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 07.03.2019 made in M.C.O.P.No.1593 of 2018 on the file of Motor Accident Claims Tribunal, II Additional District Court, Salem.

2.The appellants are claimants in M.C.O.P.No.1593 of 2018 on the file of Motor Accident Claims Tribunal, II Additional District Court, Salem. They filed the said claim petition claiming a sum of Rs.25,00,000/- as compensation for the death of one Sagayaraj, who died in the accident that took place on 05.07.2018.



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 tanker lorry belonging to the 1st respondent and directed both the 1st respondent as well as the 2nd respondent/Insurance Company being insurer of the said lorry to jointly and severally pay a sum of Rs.13,76,800/- 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 the deceased was working as a lorry driver and was earning a sum of Rs.20,000/- per month. The appellants have marked driving license of the deceased as Ex.P17 to prove the avocation. The Tribunal failed to consider the Division Bench judgment of this Court reported in 2019 (1) TNMAC 257 (Jebastin Punitha and three others vs. S.Selvaraj and another), wherein this Court has fixed a sum of Rs.15,000/- as monthly income for a heavy vehicle driver for the accident occurred in the year 2014 and erred in fixing only a meagre sum of Rs.12,000/- per month as notional income of the deceased. 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 failed to produce any document to prove the income of the deceased. In the absence of any material to prove the income of the deceased, the Tribunal fixed a sum of Rs.12,000/- per month as notional income of the deceased, which is not meagre. The total compensation awarded by the Tribunal under different heads are 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 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 lorry driver and was earning a sum of Rs.20,000/- per month. The appellants have marked driving license of the deceased as Ex.P17 to prove the avocation. The appellants failed to produce any document to prove the income of the deceased. In the absence of any material evidence with regard to income of the deceased, the Tribunal fixed a sum of Rs.12,000/- per month as notional income of the deceased, which is meagre. The accident is of the year 2018 and hence, a sum of



Rs.15,000/- per month is fixed as notional income of the deceased. The Tribunal granted 10% enhancement towards future prospects, applied multiplier '11' and deducted 1/4th towards personal expenses, which are proper. Thus, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.16,33,500/- (Rs.15,000/- + 1500/- [Rs.15,000/- X 10%] X 12 X 11 X 3/4). The Tribunal has not awarded any compensation towards loss of love and affection to the appellants 2 to 4 and hence, a sum of Rs.30,000/- each is awarded towards loss of love and affection to the appellants 2 to 4. The amounts awarded by the Tribunal under all other heads are just and reasonable and hence, the same are hereby confirmed.

9.It is well settled that the Tribunal 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 or reduced
1.	Loss of dependency	13,06,800	16,33,500	Enhanced
2.	Loss of consortium to the 1 st appellant	40,000	40,000	Confirmed
3.	Loss of love and affection to the appellants 2 to 4	-	90,000	Granted
4.	Funeral expenses	15,000	15,000	Confirmed
5.	Loss of estate	15,000	15,000	Confirmed
	Total	13,76,800	17,93,500	Enhanced by Rs.4,16,700/-

10.In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.13,76,800/- is hereby enhanced to Rs.17,93,500/- 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 necessary



Court fee, if any, on the enhanced compensation. It is made clear that the appellants are not entitled for any interest for the delay period on the amount of Rs.4,16,700/- enhanced by this Court as per the order of this Court dated 21.12.2020 made in C.M.P.No.12788 of 2020 in C.M.A.SR.No.79025 of 2020. Both the respondents 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 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/-

Deputy Registrar(R)

//True Copy//

Sub Assistant Registrar

kj

To

1.II Additional District Judge
Motor Accident Claims Tribunal
Salem.

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

+1cc to Mr.S.P.Yuaraj, Advocate, S.R.No.3964

C.M.A.No.2005 of 2020

VG-II(CO)
CB(29/10/2021)