



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.02.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.3587 OF 2019

1.P.Thangavelu
2.T.Prema
3.T.Chandrasekaran
4.T.Manjula
5.Minor. T.Usha .. Appellants/Petitioners
(Minor 5th appellant represented by her
father, P.Thangavelu, 1st appellant herein)

Vs.

1.A.Balaji
2.The New India Assurance Company Limited,
Represented by its Divisional Manager,
CSI Complex, Office Line,
Vellore Town. .. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 28.04.2018 made in M.C.O.P.No.27 of 2013 on the file of the Motor Accident Claims Tribunal, I Additional District and Sessions Court, Vellore.

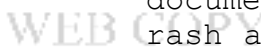
For Appellants : Mr.R.Nalliyappan
For R1 : No appearance
For R2 : Ms.S.R.Sumathy

J U D G M E N T

The matter is heard through "Video Conferencing".

2.This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 28.04.2018 made in M.C.O.P.No.27 of 2013 on the file of the Motor Accident Claims Tribunal, I Additional District and Sessions Court, Vellore.

3.The appellants are the claimants in M.C.O.P.No.27 of 2013 on the file of the Motor Accident Claims Tribunal, I Additional District and Sessions Court, Vellore. They filed the above said claim petition, claiming a sum of Rs.25,00,000/- as compensation



4. 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 car belonging to the 1st respondent and directed the 2nd respondent-Insurance Company to pay a sum of Rs.13,80,500/- as compensation to the appellants 1 and 2. The Tribunal dismissed the claim petition as against the appellants 3 to 5.

6.The learned counsel appearing for the appellants contended that at the time of accident the deceased was aged 21 years, was working as Garment Stitcher in K.H.Arind Leather Garment Private Limited, Perumugai and was earning a sum of Rs.9,000/- per month. But the Tribunal fixed a meagre sum of Rs.6,500/- per month as notional income of the deceased. The Tribunal ought to have fixed monthly income of the deceased at Rs.12,000/- and granted compensation towards loss of dependency. There are 5 dependants of the deceased and the Tribunal ought to have deducted 1/4th towards personal expenses of the deceased instead of deducting 1/3rd. The amounts awarded by the Tribunal towards funeral expenses and loss of love and affection are meagre. The Tribunal failed to award any amount towards loss of estate, transportation and mental agony and prayed for enhancement of compensation.

8. Though notice has been served on the 1st respondent and his name is printed in the cause list, there is no representation for him either in person or through counsel.



9. 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.

10. From the materials available on record it is seen that it is the case of the appellants that at the time of accident, the deceased was aged 21 years, working as Garment Stitcher in K.H.Arind Leather Garment Private Limited, Perumugai and was earning a sum of Rs.9,000/- per month. But they failed to prove the said contention. In the absence of any material evidence with regard to avocation and income, the Tribunal fixed a sum of Rs.6,500/- per month as notional income of the deceased. The accident occurred in the year 2012 and the monthly income fixed by the Tribunal is meagre. Considering the year of accident, age and avocation of the deceased, a sum of Rs.9,000/- per month is fixed as notional income of the deceased as claimed by the appellants. The deceased was a bachelor at the time of accident and the Tribunal ought to have deducted 50% towards personal expenses of the deceased instead of deducting 1/3rd. The deceased was aged 21 years at the time of accident. The Tribunal granted 40% enhancement towards future prospects and applied multiplier '18' and the same are proper. Thus, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.13,60,800/- {Rs.12,600/- [Rs.9,000/- + Rs.3,600/- (40% of Rs.9,000/-)] X 12 X 18 X 1/2}. 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. The amounts awarded by the Tribunal under other heads 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	13,10,472/-	13,60,800/-	Enhanced
2.	Funeral expenses	15,000/-	15,000/-	Confirmed
3.	Loss of love and affection	50,000/-	50,000/-	Confirmed
4.	Transportation	5,000/-	5,000/-	Confirmed
5.	Loss of estate	-	15,000/-	Granted
	Total	Rs.13,10,472/- rounded off to Rs.13,10,500/-	Rs.14,45,800/-	Enhanced by Rs.1,35,300/-



10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.13,10,500/- is hereby enhanced to Rs.14,45,800/- 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 to the credit of M.C.O.P.No.27 of 2013 on the file of the Motor Accident Claims Tribunal, II Additional District and Sessions Court, Vellore. 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 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. It is made clear that the appellants are not entitled to any interest for the default period as per the order of this Court dated 17.09.2019 made in C.M.P.No.15840 of 2019 in C.M.A.No.SR.92061 of 2019. This appeal is dismissed as against the appellants 3 to 5. No costs.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

krk

To

1. The Motor Accident Claims Tribunal,
The I Additional District and Sessions Judge,
Vellore.
2. The Section Officer,
VR Section, High Court,
Madras.

C.M.A.No.3587 of 2019

RSI (CO)
CS/29/10/2021