IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.01.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1974 of 2020

1.D.Eswari

2.D.Meha (Minor)
(Minor 2nd appellant represented by
her mother and next friend
Mrs.D.Eswari 1st appellant)

3.S.Saroja .. Appellants/Petitioners

vs.

1.N.Palani

2.Royal Sundaram General Insurance Co. Ltd.
Nos.45 and 46, Whites Road
Chennai-600 014. .. Respondents/ Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 29.01.2020 made in M.C.O.P.No.3693 of 2017 on the file of Motor Accident Claims Tribunal, (Special Sub Court No.I dealing with MCOP cases), Small Causes Court, Chennai.

For Appellants : Mr.R.Nalliyappan

For R2 : Mrs.C.Harini
for Mr.M.B.Raghavan

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 29.01.2020 made in M.C.O.P.No.3693 of 2017 on the file of Motor Accident Claims Tribunal, (Special Sub Court No.I dealing with MCOP cases), Small Causes Court, Chennai.

2.The appellants are claimants in M.C.O.P.No.3693 of 2017 on the file of Motor Accident Claims Tribunal, (Special Sub Court No.I dealing with MCOP cases), Small Causes Court, Chennai. They filed the said claim petition claiming a sum of Rs.47,00,000/- as compensation for the death of one S.Dhamodaran, who died in the accident that took place on 23.08.2016.

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 sewage lorry belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said sewage lorry to pay a sum of Rs.15,50,000/- 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 working as a car driver in M/s.Harmony Homes, Chennai and was earning a sum of Rs.18,000/- per month. The appellants have examined the co-employee of the deceased as P.W.3 and marked Ex.P6 to prove the avocation and income of the deceased. The Tribunal erred in fixing a meagre sum of Rs.10,000/- per month as notional income of the deceased for non-production of Income Tax returns. 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 Income Tax returns of the deceased. In the absence of material evidence with regard to income, the Tribunal fixed a sum of Rs.10,000/- per month as notional income of the deceased, which is not meagre. The amounts awarded by the Tribunal under different heads are excessive. Therefore, the appellants are not entitled to any 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.From the materials on record, it is seen that it is the contention of the appellants that the deceased was working as a car driver in M/s.Harmony Homes, Chennai and was earning a sum of Rs.18,000/- per month. The appellants have examined the co-employee of the deceased as P.W.3 and marked the employment details and income particulars of the deceased as Ex.P6 to prove the avocation and income of the deceased. The Tribunal fixed a sum of Rs.10,000/- per month as notional income of the deceased holding that the appellants have not produced cash payment vouchers, Bank passbook entry and Income Tax returns of the deceased. The reason given by the Tribunal is not proper. The accident is of the year 2016 and the notional income fixed by the Tribunal is meagre. Hence, a sum of Rs.14,000/- per month is fixed as notional income of the deceased. The deceased was aged 43 years at the time of the accident as per Ex.P5/driving license of the deceased. The Tribunal has not granted any enhancement towards future prospects. 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 25% enhancement towards future prospects. By applying multiplier '14' and deducting 1/3rd towards personal expenses, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.19,60,000/- (14,000/- + 3500 [Rs.14,000/- X 25%] X 12 X 14 X 2/3). The amounts awarded by the Tribunal under all other heads are not meagre 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 or reduced
1.	Loss of dependency	14,00,000	19,60,000	Enhanced
2.	Loss of consortium	40,000	40,000	Confirmed
3.	Loss of love and affection	75,000	75,000	Confirmed
4.	Loss of estate	15,000	15,000	Confirmed
5.	Transportation	5,000	5,000	Confirmed
6.	Funeral expenses	15,000	15,000	Confirmed
	Total	15,50,000	21,10,000	Enhanced by Rs.5,60,000/-

9.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.15,50,000/- is hereby enhanced to Rs.21,10,000/- 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 3 are permitted to withdraw their respective share of the award amount as per the apportionment fixed by the Tribunal along with proportionate interest and costs, less the amount if any, already withdrawn. The share amount of the minor/2nd appellant is directed to be deposited in any one of the Nationalised Banks till the minor attains majority. The 1st appellant, being mother of the minor/2nd appellant, is permitted to withdraw the accrued interest once in three months for the welfare of the minor. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1.The Special Subordinate Judge No.I
(dealing with MCOP cases)
(Motor Accident Claims Tribunal)
Small Causes Court, Chennai.

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

VBI
A.SK(13.09.2021)