IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2008 of 2020

1.A.S.Abdul Azeez
2.Zubaida
3.Nihar Sulthan
4.Nasim Banu .. Appellants/Claimants

Vs.

1.M/s.Rajalakshmi Industries,
No.731, TNHB Industrial Estate,
2nd Muthamaizh Nagar, Kodungaiyur,
Chennai 600 118.

2.Liberty Videocon General Insurance Company Ltd.,
Anmol Palani, No.88, GN Chetty Road, Level-4,
Unit No.ES & FS, T.Nagar,
Chennai 600 017. .. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 14.11.2019, made in M.C.O.P. No.4769 of 2018, on the file of the Chief Judge, Court of Small Causes, (Motor Accident Claims Tribunal), Chennai.

For Appellants : Mr.K.Varadha Kamaraj
for M/s.S. Ravikumar

For Respondents : Mrs.C.Harini (For R2)
for M/s. M.B.Raghavan

J U D G M E N T

This matter is heard through "Video Conferencing".

This Civil Miscellaneous Appeal has been filed for enhancement of the compensation granted by the Tribunal in the award dated 14.11.2019, made in M.C.O.P. No.4769 of 2018, on the file of the Chief Judge, Court of Small Causes, (Motor Accident Claims Tribunal), Chennai.

2.The appellants filed M.C.O.P. No.4769 of 2018, on the file of the Chief Judge, Court of Small Causes, (Motor Accident Claims Tribunal), Chennai, claiming a sum of Rs.40,00,000/- as compensation for the death of one Maher Banu who died in the accident that took place on 15.05.2018.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that accident occurred due to rash and negligent riding by rider of the Motorcycle belonging to the 1st respondent and directed the 2nd respondent as insurer of the vehicle to pay a sum of Rs.4,87,000/- as compensation to the appellants at the first instance and recover the same from the 1st respondent, owner of the vehicle as the rider of the Motorcycle did not possess driving license at the time of accident.

4.Not being satisfied with the amounts granted by the award dated 14.11.2019, made in M.C.O.P. No.4769 of 2018, the appellants have come out with the present appeal.

5.The learned counsel appearing for the appellants contended that at the time of accident, the deceased was working as a Tailor and was earning a sum of Rs.700/- per day. The Tribunal erroneously fixed only a sum of Rs.8,000/- per month as notional income. The deceased was aged 57 years at the time of accident. The Tribunal failed to grant any enhancement towards future prospects of the deceased. There are four dependents of the deceased. The Tribunal erred in deducting 50% towards personal expenses of the deceased, instead of deducting 1/4th. The amounts awarded by the Tribunal towards loss of love and affection, funeral expenses and loss of dependency are meagre and prayed for enhancement of the compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that in the absence of any evidence to prove the avocation and income of the deceased, the Tribunal fixed a sum of Rs.8,000/- per month as notional income, 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 the 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 materials available on record.

8.From the materials on record, it is seen that it is the contention of the appellants that at the time of accident, the deceased was working as a Tailor and was earning a sum of Rs.700/- per day. The appellants failed to prove the same. In the absence of any documentary evidence, the Tribunal fixed a meagre sum of Rs.8,000/- per month as notional income of the deceased. The accident is of the year 2018. The cost of living has increased enormously and salary of even unskilled workers has increased substantially. It is now settled that even for a house wife, notional income has to be fixed, as she does considerable work as wife, mother, daughter and daughter-in-law and manages the house hold work for most part of the day and night. Hence, a sum of Rs.13,000/- per month is fixed as notional income of the deceased. The appellants have contended that the deceased was aged 57 years at the time of accident. But they failed to prove the same. In the absence of any documents, the Tribunal relying on the death certificate marked as Ex.P6, rightly fixed the age of the deceased as 60 years, but failed to award any enhancement towards future prospectus. 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 10% enhancement towards future prospects. There are four dependants of the deceased. The Tribunal holding that the appellants, who are children of the deceased, are adults, married and not dependent on the deceased, erroneously deducted 50% towards personal expenses of the deceased, as against 1/4th. The reason given by the Tribunal for deducting 50% is not correct. It is well settled that major children who are married will also be dependent of the deceased/mother. Hence, deducting 1/4th towards personal expenses of the deceased, granting 10% enhancement towards future prospects and applying the multiplier '9', the amount granted by the Tribunal towards loss of dependency is modified to Rs.11,58,300/- {[Rs.13,000/- + Rs.1,300/- (10% of Rs.13,000/-)] x 12 x 9 x 3/4}. The Tribunal failed to award any amount for loss of estate. The appellants are entitled to a sum of Rs.15,000/- for loss of estate. The amounts granted by the Tribunal under other heads are just and reasonable and hence, the same are 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
1.	Loss of dependency	4,32,000/-	11,58,300/-	Enhanced
2.	Loss of love and affection	40,000/-	40,000/-	Confirmed
3.	Funeral expenses	15,000/-	15,000/-	Confirmed
4.	Loss of estate	-	15,000/-	Granted
	Total	4,87,000/-	12,28,300/-	Enhanced by Rs.7,41,300/-

10.In the result, the appeal is allowed and the amount awarded by the Tribunal at Rs.4,87,000/- is enhanced to Rs.12,28,300/- 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, 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.4769 of

2018 at the first instance and recover the same from the 1st respondent. On such deposit, the appellants are permitted to withdraw their share of the award amount, now determined by this Court, along with proportionate interest and costs, as per the ratio of apportionment fixed by the Tribunal, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. No costs.

Sd/-
Assistant Registrar (CS-VIII)

// True Copy //

Sub Assistant Registrar

gsa
To

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

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

+1CC to Mr.S.Ravikumar, Advocate, SR.No. 4880

C.M.A.No.2008 of 2020

VBM(CO)
B.VC (22/09/2021) (28/09/2021)