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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3754 of 2019

1.Manjula

2.Perumal

.. Appellants/Petitioners

Vs.

1.The Secretary,

M/s.Vivekananda Vidhyalaya School,

Puduchatram Post,

Namakkal Taluk and District - 637 018.

2.The Manager,

New India Assurance Company Limited,

No.421, Rasipuram Main Road,

Vennandur, Rasipuram Taluk,

Namakkal District.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 11.04.2016 made in M.C.O.P.No.696 of 2014 on the file of the Motor Accident Claims Tribunal, Additional District Court, Namakkal.

For Appellants	:	Mr.A.Sathish Kumar for Mr.C.Thangaraju
For R1	:	No appearance
For R2	:	Mr.G.Anandan

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 11.04.2016 made in M.C.O.P.No.696 of 2014 on the file of the Motor Accident Claims Tribunal, Additional District Court, Namakkal.

3.The appellants are the claimants in M.C.O.P.No.696 of 2014 on the file of the Motor Accident Claims Tribunal, Additional District Court, Namakkal. They filed the above said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the death of their daughter viz., Gobishka, who died in the accident that took place on 26.03.2014.



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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 bus belonging to the 1st respondent and directed the 2nd respondent-Insurance Company to pay a sum of Rs.3,75,000/- as compensation to the appellants at the first instance and recover the same from the 1st respondent.

5.Not being satisfied with the amounts awarded by the Tribunal, the appellants have come out with the present appeal seeking enhancement of compensation.

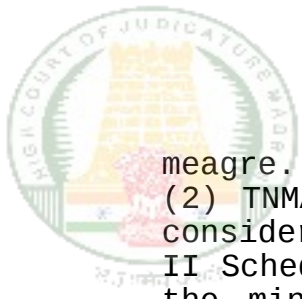
6.The learned counsel appearing for the appellants contended that the Tribunal having held that loss of daughter cannot be compensated monetarily, awarded only a sum of Rs.2,25,000/- towards loss of dependency, which is meagre. The deceased was only 3 years at the time of accident. The Tribunal ought to have fixed monthly income of the deceased at Rs.7,000/- and applied multiplier '18' and granted compensation for loss of dependency. The Tribunal failed to grant compensation for loss of estate, funeral expenses and loss of love & affection separately. The compensation awarded by the Tribunal for loss of non-pecuniary damages is arbitrary and erroneous and prayed for enhancement of compensation.

7.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the deceased was a minor, non-earning member at the time of accident and the amount awarded by the Tribunal is just compensation. Hence, the appellants are not entitled for any enhancement and prayed for confirming the award passed by the Tribunal and for dismissal of the appeal.

8.Though notice has been served on the 1st respondent and its name is printed in the cause list, there is no representation for them, 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 contention of the appellants that the deceased was a minor girl aged 3 years and died due to the injuries sustained by her in the accident that occurred on 26.03.2014. The Tribunal considering the judgment of the High Court of Delhi reported in 2012 (2) TNMAC 60 (Delhi), [Shashi Bhushan & Others Vs. National Insurance Company Limited & Others], granted a sum of Rs.2,25,000/- towards loss of dependency, Rs.75,000/- towards future prospects and Rs.75,000/- towards non-pecuniary damages. The amounts arrived by the Tribunal for death of minor is



meagre. The Hon'ble Apex Court in the judgment reported in 2013 (2) TNMAC 358 (SC), [Kishan Gopal & another Vs. Lala & others], considering the passage of time from the date of incorporating II Schedule and rise in cost of living, fixed notional income of the minor at Rs.30,000/- per annum. In the present case, the accident is of the year 2014. Therefore, the annual income of the minor deceased is fixed at Rs.30,000/-. The deceased was aged 3 years at the time of accident and the correct multiplier applicable as per the II Schedule is '15'. By applying multiplier '15' and fixing annual income at Rs.30,000/-, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.4,50,000/- [Rs.30,000/- x 15]. As per the judgment of the Hon'ble Apex Court reported in 2013 (2) TNMAC 358 (SC), cited supra, the appellants are entitled to a sum of Rs.50,000/- towards conventional heads. The amounts awarded by the Tribunal towards non-pecuniary damages and future prospects are liable to be set aside and hence, they are hereby set aside. 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	2,25,000/-	4,50,000/-	Enhanced
2.	Non-pecuniary damages	75,000/-	-	Set aside
3.	Future prospects	75,000/-	-	Set aside
4.	Conventional heads	-	50,000/-	Granted
	Total	Rs.3,75,000/-	Rs.5,00,000/-	Enhanced by Rs.1,25,000/-

11. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.3,75,000/- is hereby enhanced to Rs.5,00,000/- 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 to the credit of M.C.O.P.No.696 of 2014 on the file of the Motor Accident Claims Tribunal, Additional District Court, Namakkal, at the first instance and recover the same from the 1st respondent-owner of the bus. On such deposit, the appellants 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 Rs.1,25,000/- the amount now enhanced by this Court, as per the order of this Court dated 19.09.2019 made in C.M.P.No.19143 of 2019 in C.M.A.No.SR.99648 of 2019. The appellants are directed to pay the necessary Court fee as per the order of this Court dated 26.08.2019 made in C.M.P.No.17027 of 2019 in C.M.A.No.SR.99648 of 2019. No costs.

Sd/-
Assistant Registrar (CS-V)

// True Copy //

Sub Assistant Registrar

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To

1.The Additional District Judge,
Motor Accident Claims Tribunal,
Namakkal.

+2CCs to M/s.C.Thangaraju, Advocate, SR.No.3634
+1CC to Mr.G.Anandan, Advocate, SR.No.3661

C.M.A.No.3754 of 2019

AK(CO)
B.VC (08/09/2021)