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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.01.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1925 of 2016
and
C.M.P.No.15539 of 2016

1.R.Raniammal
2.R.Kalpana
3.R.Saravanan

.. Appellants/Petitioners

Vs.

1. P.Srinivasan
(R1 remained exparte before Tribunal.
Hence, notice to R1 dispensed with)

2. New India Assurance Company Limited,
Officer Line,
Vellore N.A.A. District.

3.M/s. Alfa Creations Private Limited,
No.5, Patnool Sardar Jung Street,
Periamet,
Chennai - 600 003.

(R3 remained exparte before Tribunal.
Hence, notice to R3 dispensed with)

4. Oriental Insurance Company Limited,
Katpadi Road,
Vellore,
N.A.A. 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 17.11.2008 made in M.C.O.P.No.3622 of 2000 on the file of the Motor Accident Claims Tribunal, Chief Small Causes Court, Chennai.

For Appellants : Mr.F.Terry Chella Raja
for M/s.M.Malar

For R2 : Mr.M.Krishnamoorthy

For R4 : Mr.M.J.Vijayaraaghavan



J U D G M E N T

(The matter is heard through "Video Conferencing")

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the Tribunal in the award dated 17.11.2008 made in M.C.O.P.No.3622 of 2000 on the file of the Motor Accident Claims Tribunal, Chief Small Causes Court, Chennai.

2.The appellants are the claimants in M.C.O.P.No.3622 of 2000 on the file of the Motor Accident Claims Tribunal, Chief Small Causes Court, Chennai. They filed the above said claim petition, claiming a sum of Rs.30,00,000/- as compensation for the death of one P.Ramalingam, who died in the accident that took place on 10.12.1995.

3.The Tribunal considering the pleadings, oral and documentary evidence, held both the driver of the van belonging to 1st respondent as well as the driver of the mini lorry belonging to 3rd respondent are equally responsible for the accident, awarded a sum of Rs.5,70,000/- as compensation and directed the respondents 2 & 4 to deposit a sum of Rs.2,85,000/- each, being 50% of the award amount 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 a Electrician and Plumber, he was also carrying on Trade and running Electrical Business, doing Regular Contractual works for Kanchi Sankarachariar Mutt and also working for other Rice Mill Owners in Kancheepuram and was earning a sum of Rs.40,000/- per month. The appellants proved the avocation and income of the deceased by examining co-workers of the deceased as P.W.3 to P.W.5 and also by producing Exs.P1 to P6, P13, P15 & P17. But, the Tribunal has fixed a meagre sum of Rs.5,000/- per month as notional income of the deceased. The deceased was aged 45 years at the time of accident whereas the Tribunal has applied multiplier '13' as against the correct multiplier '14'. The Tribunal has not granted any enhancement towards future prospects. The amounts awarded by the Tribunal towards loss of consortium to 1st appellant and loss of love and affection to appellants 2 & 3 are meagre. The Tribunal has not awarded any amount towards funeral expenses and loss of estate and prayed for enhancement of compensation.

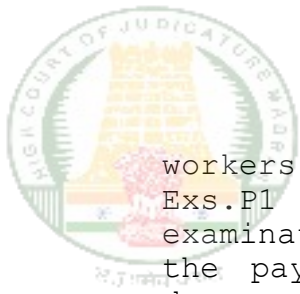


6.The learned counsel appearing for the 2nd respondent-New India Assurance Company Limited contended that the accident has occurred only due to the negligence on the part of the driver of the mini lorry belonging to 3rd respondent and there is no negligence on the part of the driver of the van belonging to 1st respondent and insured with 2nd respondent. The Tribunal erroneously fixed negligence on the part of the driver of the van and directed the 2nd respondent to pay 50% of the award amount as compensation to the appellants. The appellants failed to prove the avocation and income of the deceased by acceptable evidence. In the absence of any acceptable evidence, a sum of Rs.5,000/- per month fixed by the Tribunal as notional income of the deceased is not meagre. The Tribunal considering the entire materials on record, has awarded a sum of Rs.5,70,000/- as compensation to the appellants and the same is not meagre. The appellants have not made out any case for enhancement and prayed for dismissal of the appeal.

7.The learned counsel appearing for the 4th respondent-Oriental Insurance Company Limited contended that the Tribunal erroneously fixed 50% negligence on the part of the driver of the mini lorry and directed the 4th respondent to pay 50% of the compensation to the appellants when the accident has occurred only due to negligence on the part of the driver of the van belonging to 1st respondent and insured with 2nd respondent. In the absence of any documentary evidence with regard to avocation and income, the Tribunal fixed a sum of Rs.5,000/- per month as notional income of the deceased, applied multiplier '13' and awarded a sum of Rs.5,20,000/- as compensation towards loss of dependency, Rs.20,000/- towards loss of consortium to 1st appellant, Rs.10,000/- towards transportation and Rs.20,000/- towards loss of love and affection to appellants 2 & 3 and the same are not meagre. The total compensation awarded by the Tribunal is not meagre. The appellants have not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

8.Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the 2nd respondent and the learned counsel appearing for the 4th respondent and perused the entire materials on record.

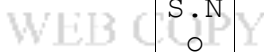
9.It is the case of the appellants that at the time of accident, the deceased was a Electrician and Plumber, he was also carrying on Trade and running Electrical Business, doing Regular Contractual works for Kanchi Sankarachariar Mutt and also working for other Rice Mill Owners in Kancheepuram and was earning a sum of Rs.40,000/- per month. The appellants proved the avocation and income of the deceased by examining co-



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workers of the deceased as P.W.3 to P.W.5 and also by producing Exs.P1 to P6, P13, P15 & P17. P.W.3 to P.W.5 in their cross examination have admitted that they are having records to prove the payment of Rs.35,000/-, Rs.1,100/- and Rs.3,000/- to the deceased, but they have not produced the said records before the Tribunal to prove the income of the deceased. Had the deceased been earning a sum of Rs.40,000/- per month, he would have paid Income Tax. But, the appellants nowhere in the claim petition have claimed that the deceased was an Income Tax assessee. Therefore, the Tribunal considering the evidence of P.W.3 to P.W.5 and entire materials placed before it, fixed a sum of Rs.5,000/- per month as notional income of the deceased. The accident is of the year 1995. The monthly income fixed by the Tribunal at Rs.5,000/- is not meagre. The deceased was aged 45 years at the time of accident and multiplier '13' applied by the Tribunal is not correct. As per the judgment of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC Supreme Court, [Sarla Verma & others Vs. Delhi Transport Corporation & another] the correct multiplier applicable is '14'. The Tribunal has not granted any enhancement towards future prospects. As per the judgment of the Hon'ble Apex Court reported in 2017 (2) TNMAC 609 (SC), [National Insurance Company Limited Vs. Pranay Sethi and others], the appellants are entitled to 25% enhancement towards future prospects. Thus, by granting 25% enhancement towards future prospects and applying multiplier '14', the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.7,00,000/- {Rs.6,250/- [Rs.5,000/- + Rs.1,250/- (25% of Rs.5,000/-)] X 12 X 14 X 2/3}. The amount awarded by the Tribunal towards loss of consortium to 1st appellant is meagre and hence, the same is enhanced to Rs.40,000/-. The Tribunal has not awarded any amounts towards funeral expenses and loss of estate. The appellants are entitled to a sum of Rs.15,000/- each towards funeral expenses and loss of estate respectively. The Tribunal has awarded a sum of Rs.10,000/- each to the appellants 2 & 3 towards loss of love and affection. The appellants 2 & 3, being the children of the deceased are entitled to a sum of Rs.40,000/- each towards loss of love and affection. The amount awarded by the Tribunal towards transportation is just and reasonable and hence, the same is hereby confirmed.

10.It is well settled that the Tribunal and the Courts have to award just compensation. Though the claimant has 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.N o	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	5,20,000/-	7,00,000/-	Enhanced
2.	Loss of consortium to 1 st appellant	20,000/-	40,000/-	Enhanced
3.	Loss of love and affection to appellants 2 & 3	20,000/-	80,000/-	Enhanced
4.	Transportation	10,000/-	10,000/-	Confirmed
5.	Funeral expenses	-	15,000/-	Granted
6.	Loss of estate	-	15,000/-	Granted
	Total	Rs.5,70,000/-	Rs.8,60,000/-	Enhanced by Rs.2,90,000/-

11. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.5,70,000/- is hereby enhanced to Rs.8,60,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit, excluding the period between 20.10.2004 to 16.03.2006. The respondents 2 & 4 are directed to deposit a sum of Rs.4,30,000/- each, being 50% of 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.3622 of 2000 on the file of the Motor Accident Claims Tribunal, Chief Small Causes Court, Chennai. 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.2,90,000/-, the amount now enhanced by this Court as per the order of this Court dated



18.08.2016 made in C.M.P.No.7898 of 2016 in C.M.A.SR.No.94949 of 2015. Consequently, the connected Miscellaneous Petition is closed. No costs.

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Sd/-
Assistant Registrar(CS VIII)

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Sub Assistant Registrar

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To

1. The Chief Judge,
Motor Accident Claims Tribunal,
Small Causes Court,
Chennai.
2. The Section Officer,
VR Section,
High Court,
Madras.

+1cc to M/s.M.Malar, Advocate, S.R.No.4251

C.M.A.No.1925 of 2016

SJ(CO)
CT 07/04/2022