IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.09.2022

CORAM:

THE HONOURABLE **MS.JUSTICE V.M.VELUMANI**
and
THE HONOURABLE **MRS.JUSTICE T.V.THAMILSELVI**

C.M.A. No.3583 of 2021

V.Rani (died)

1.S.Radha
2.V.Roja
3.Minor V.Manikandan

(Minor rep. by his sister and
next friend, 1st appellant) .. Appellants

Vs.

1.S.Thangaraj

2.S.Gokila Priya

3.ICICI Lombard General Insurance Company Limited,
ICICI Lombard House,
No.414, Veer Savarkar Marg,
Near Siddhi Vinayak Temple,
Prabhadevi, Mumbai 400 025. .. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 22.03.2018, made in M.C.O.P. No.267 of 2013, on the file of the IV Additional District Court, (Motor Accident Claims Tribunal), Erode District at Bhavani.

For Appellants : Mr.Ma.Pa.Thangavel

For R3 : Mr.S.Siva Kollappan

JUDGMENT

[Judgment of the Court was delivered by V.M.VELUMANI,J.]

This Civil Miscellaneous Appeal has been filed by the appellants-claimants seeking enhancement of the compensation granted by the Tribunal in the award dated 22.03.2018, made in M.C.O.P. No.267 of 2013, on the file of the IV Additional District Court, (Motor Accident Claims Tribunal), Erode District at Bhavani.

2.The appellants/claimants along with one V.Rani filed M.C.O.P. No.267

of 2013, on the file of the IV Additional District Court, (Motor Accident Claims Tribunal), Erode District at Bhavani, claiming a sum of Rs.12,00,000/- as compensation for the death of one R.Veerasamy, who died in the accident that took place on 14.02.2013. Pending claim petition, the said V.Rani died.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the 1st respondent, driver of the TATA 709 Truck owned by the 2nd respondent and directed the 3rd respondent-Insurance Company to pay a sum of Rs.10,50,000/- 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.

5.The learned counsel appearing for the appellants contended that at the time of accident, the deceased R.Veerasamy was aged 45 years, working as a

Mason and earning a sum of Rs.18,000/- per month. The Tribunal without considering the evidence of P.W.3 – Iyyappan, who is the employer of the deceased and Salary Certificate marked as Ex.P9, erroneously fixed only a meagre sum of Rs.7,000/- per month as notional income of the deceased and awarded compensation towards loss of dependency. At the time of accident, there were four dependents of the deceased including V.Rani, wife of the deceased. Pending claim petition, the said V.Rani died. The Tribunal ought to have considered the judgment of the Hon'ble Apex Court reported in ***2009 (2) TNMAC 1 SC (Sarla Verma and others vs. Delhi Transport Corporation and another)*** and deducted 1/4th towards personal expenses of the deceased, instead of 1/3rd. The Tribunal considering the fact that the appellants who are the children of the deceased R.Veerasamy have lost both of their parents, ought to have awarded atleast Rs.1,00,000/- each towards loss of love and affection. The amounts awarded by the Tribunal under the conventional heads viz., loss of estate, funeral expenses and transportation are also meagre and prayed for enhancement of the compensation. The learned counsel appearing for the appellants, in support of his contention with regard to erroneous deduction made by the Tribunal, relied on the judgment of the Hon'ble Apex Court reported in ***(2021) 2 SCC 166 [Kirti and another Vs. Oriental Insurance Co. Ltd.,],*** wherein the relevant portions reads as follows:

> *"**9.**We have thoughtfully considered the rival submissions. It cannot be disputed that at the time of death, there in fact were four dependants of the deceased and not three. The subsequent death of the deceased's dependant mother ought not to be a reason for reduction of motor accident compensation. Claims and legal liabilities crystallise at the time of the accident itself, and changes post thereto ought not to ordinarily affect pending proceedings. Just like how the appellant claimants cannot rely upon subsequent increases in minimum wages, the respondent insurer too cannot seek benefit of the subsequent death of a dependant during the pendency of legal proceedings. Similarly, any concession in law made in this regard by either counsel would not bind the parties, as it is legally settled that advocates cannot throw away legal rights or enter into arrangements contrary to law.*
>
> ***10.**Any compensation awarded by a Court ought to be just, reasonable and consequently must undoubtedly be*

> *guided by principles of fairness, equity and good conscience. Not only did the family of the deceased consist of septuagenarian parents, but there were also two toddler girls aged merely 3 and 4 years; each of whom requires exceptional care and expenditure till they reach the stage of self-dependency. Tragically, in addition to the married couple, the negligence of the driver also extinguished the life of the family's third child who was a foetus in Poonam's womb at the time of the accident. Thus, the appropriate deduction for personal expenses for both Vinod and Poonam ought to be 1/4th only, and not 1/3rd as applied by the Tribunal and the High Court, more so when there were four family members dependent on the deceased.”*

6.Per contra, the learned counsel appearing for the 3rd respondent-Insurance Company contended that the Tribunal taking into consideration the fact that no document has been filed to prove the income of the deceased R.Veerasamy, fixed the notional income of the deceased at Rs.7,000/- per month. The same is not meagre. The amounts awarded by the Tribunal under different heads are also 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 entire materials available on record.

8.From the materials on record, it is seen that it is the case of the appellants that at the time of accident, the deceased R.Veerasamy was aged 45 years, working as a Mason and was earning a sum of Rs.18,000/- per month. To prove the same, they have examined one Iyyappan, employer of the deceased as P.W.3 and marked Ex.P8 – certificate stating the daily wages of the deceased is Rs.800/-. The Tribunal, taking into consideration the fact that no attendance register and voucher for receipt of the daily wages has been filed by the appellants to prove the income of the deceased, fixed a sum of Rs.7,000/- per month as notional income of the deceased. The accident is of the year 2013. Taking into consideration the year of accident and nature of work done by the deceased, this Court is of the opinion that the notional income fixed by the Tribunal at Rs.7,000/- per month is meagre. It will be just and proper to fix the monthly income at Rs.9,000/-. The Tribunal, considering the judgments of the Hon'ble Apex Court reported in ***2009 (2) TNMAC 1 SC (Sarla Verma and others vs. Delhi Transport Corporation and another) and 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and others],*** has rightly applied the multiplier '14' and granted 25% enhancement towards future prospects. At the time of accident, there were four dependents of the deceased. Pending claim petition, the wife of the deceased viz., V.Rani died. As per the judgment of the Hon'ble Apex Court reported in ***(2021) 2 SCC 166*** (cited supra), relied on by the learned counsel for the appellants, the deduction of 1/3rd made by the Tribunal towards personal expenses of the deceased is erroneous and 1/4th has to be deducted towards personal expenses of the deceased. Hence, fixing the notional income of the deceased at Rs.9,000/- per month, granting 25% enhancement towards future prospects, applying multiplier '14' and deducting 1/4th towards personal expenses of the deceased, the compensation awarded by the Tribunal towards loss of dependency is modified and enhanced to Rs.14,17,500/- {[Rs.9,000/- + Rs.2,250/- (25% of Rs.9,000/-)] x 12 x 14 x ¾}. The sum of Rs.30,000/- awarded by the Tribunal towards loss of love and affection is meagre. The appellants who are the children of the deceased R.Veerasamy are entitled to Rs.40,000/- each towards parental consortium. Hence, the amounts awarded by the Tribunal towards loss of love and affection is enhanced to Rs.1,20,000/-, at the rate of Rs.40,000/- each to the appellants. 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	9,80,000/-	14,17,500/-	Enhanced
2.	Loss of love and affection	30,000/-	1,20,000/-	Enhanced
3.	Transportation	10,000/-	10,000/-	Confirmed
4.	Loss of estate	15,000/-	15,000/-	Confirmed
5.	Funeral expenses	15,000/-	15,000/-	Confirmed
	Total	**10,50,000/-**	**15,77,500/-**	**Enhanced by Rs.5,27,500/-**

9.In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.10,50,000/- is enhanced to Rs.15,77,500/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 3rd 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.267 of 2013. On such deposit, the appellants 1 and 2 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. The share of the minor 3rd appellant is directed to be deposited in any one of the Nationalized Bank, till the minor attains majority. The 1st appellant, sister of the minor 3rd appellant is permitted to withdraw the accrued interest, once in three months for the welfare of the minor 3rd appellant. It is made clear that the appellants are not entitled for any interest on the amount of Rs.5,27,500/-, enhanced by this Court, as per the order of this Court dated 27.10.2021, made in C.M.P.No.13962 of 2021 in C.M.A.SR.38121 of 2019, from the date of the award till the date of numbering this appeal. The appellants are directed to pay the necessary court fee on the enhanced award amount. No costs.

(V.M.V., J) (T.V.T.S, J)
22.09.2022

Index : Yes/No
Speaking Order : Yes/No
gsa

To

1.The IV Additional District Judge,
(Motor Accident Claims Tribunal),
Erode District at Bhavani.

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

V.M.VELUMANI, J.
and
T.V.THAMILSELVI, J.

(gsa)

C.M.A. No.3583 of 2021

22.09.2022