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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2022

CORAM :

THE HONOURABLE MS.JUSTICE S.KANNAMMAL

C.M.A.NO.2368 OF 2018

1.Gomathi

2.Radha

3.Sumalatha

4.Minor Priyanka
(Rep. by N/F Mother 1st appellant)

Angammal (died)

...Appellants

Vs.

1.Sumathi

[R1 remained exparte before the Tribunal.
Hence, notice to R1 dispensed with]

2.The Divisional Manager,
National Insurance Company Limited,
Divisional Office, No.74-A,
Paramathi Road, Namakkal.

...Respondents

Prayer : This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and Decree dated 11.07.2017 made in M.C.O.P.No.562 of 2013 on the file of the Motor Accidents Claims Tribunal cum Principal District Judge, Namakkal.

For Appellants	:	Mr.C.Kulanthaivel
For R1	:	Ex-parte before Tribunal
For R2	:	Mrs.N.B.Surekha

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the Tribunal, by award dated 11.07.2017 made in M.C.O.P.No.562 of 2013 on the file of the Motor Accidents Claims Tribunal, Principal District Judge, Namakkal.



2. The appellants are the claimants in M.C.O.P.No.562 of 2013 on the file of the Motor Accidents Claims Tribunal, Principal District Judge, Namakkal. They filed the above said claim petition, claiming a sum of Rs.12,00,000/- as compensation for the death of one Thangaraj, who died in the accident that took place on 25.01.2013.

3. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident had occurred due to rash and negligent driving by the driver of the Mini Bus belonging to the 1st respondent and directed the 2nd respondent-Insurance Company to pay a sum of Rs.6,84,000/- as compensation to the appellants at the first instance and recover the same from the 1st respondent, being the owner of the offending vehicle.

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/claimants contended that, at the time of accident, the deceased was aged about 45 years, working as Painter and was earning a sum of Rs.15,000/- per month. But the Tribunal erroneously fixed the monthly income of the deceased at Rs.6,000/- per month which is meagre. The Tribunal failed to consider the occupation, income and future prospects of the deceased. The Tribunal ought to have fixed notional income of the deceased at Rs.10,000/- per month. The Tribunal fixed a sum of Rs.2,000/- towards love and affection to all the 5 claimants which is very meagre. There are four dependants of the deceased. The Tribunal wrongly deducted 1/3rd towards personal expenses instead of deducting 1/4th. The Tribunal failed to grant any compensation towards loss of consortium to the 1st appellant. The amounts awarded by the Tribunal towards funeral expenses, transportation and loss of estate are meagre and the learned counsel for the appellants/claimants prayed for enhancement of compensation.

6. Per contra, Mrs.N.B.Surekha, learned counsel appearing for the 2nd respondent-Insurance Company contended that the appellants failed to prove the avocation and income of the deceased by producing valid documents. In the absence of any material evidence with regard to avocation and income of the deceased, the sum of Rs.6,000/- per month fixed by the Tribunal as notional income of the deceased, is not meagre. The Tribunal, considering the entire materials on record, awarded a sum of Rs.6,84,000/- as compensation to the appellants, which is excessive. The appellants have not made out any case for



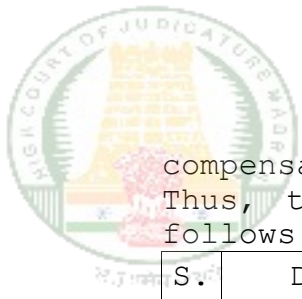
enhancement of compensation and she prayed for dismissal of the appeal.

7. 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 available on record.

8. From the materials available on record, it is seen that at the time of accident, the deceased was aged about 45 years, working as Painter and was earning a sum of Rs.15,000/- per month. But the Tribunal erroneously fixed the monthly income of the deceased at Rs.6,000/- per month, which is meagre and hence, this Court fixes monthly income of the deceased at Rs.10,000/- per month. The Tribunal has calculated future prospects at the rate of 25%, which is just and reasonable and hence, the same needs no interference. Considering the age of the deceased, the Tribunal has rightly applied multiplier '14'. There are four dependants of the deceased but, the Tribunal has deducted 1/3th towards personal expenses of the deceased. This Court is of the view that the 2nd and 3rd appellants are the children of the deceased and now they are married and hence, this Court is of the view that 1/3rd deduction, by the Tribunal towards personal expenses of the deceased, is correct and the same needs no interference. Hence, the amounts awarded by the Tribunal towards loss of income is modified to Rs.14,00,000/- [Rs.12,500 (Rs.10,000/- + 2,500/- (25% of 10,000) X 12 X 14 X 2/3].

9. Further, the Tribunal has awarded a meager sum of Rs.2,000/- towards loss of love and affection to all the 5 claimants which is very meagre and the same has to be enhanced. Hence by fixing Rs.20,000/- each to the appellants 2 and 3, the compensation amount is calculated at Rs.40,000/- under the head of loss of love and affection to 2nd and 3rd appellants and Rs.40,000/- is awarded to the 4th appellant towards loss of love and affection, who is a minor girl. Further, the Tribunal has awarded a sum of Rs.3,000/- towards loss of estate, which is meagre and the same is hereby enhanced to Rs.15,000/-. The Tribunal has awarded Rs.5,000/- towards funeral expenses which is also meagre and the same is hereby enhanced to Rs.15,000/-. The Tribunal fixed a paltry sum of Rs.2,000/- towards transport expences and the same is hereby enhanced to Rs.10,000/- Further, the Tribunal has not granted any amount towards loss of consortium to the 1st appellant who is the wife of the deceased. Hence, this Court awards a sum of Rs.40,000/- towards loss of consortium to the 1st appellant.

10. 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	Rs.6,72,000/-	Rs.14,00,000/-	Enhanced
2.	Loss of love and affection to all the appellants	Rs.2,000/-	---	---
	Loss of love and affection to the 2 nd and 3 rd appellants	---	Rs.40,000/-	Enhanced
	Loss of love and affection to the 4 th appellant	---	Rs.40,000/-	Enhanced
3	Loss of consortium to the 1 st appellant	----	Rs.40,000/-	Granted
4	Loss of Estate	Rs.3,000/-	Rs.15,000/-	Enhanced
5	Funeral Expenses	Rs.5,000/-	Rs.15,000/-	Enhanced
6	Transport Expenses	Rs.2,000/-	Rs.10,000/-	Enhanced
	Total	Rs.6,84,000/-	Rs.15,60,000/-	Enhanced by Rs.8,76,000/-

11. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.6,84,000/- is hereby enhanced to Rs.15,60,000/- [Rupees Fifteen Lakhs and Sixty Thousands only] 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.562 of 2013, on the file of the Motor Accident Claims Tribunal, Principal District Judge, Namakkal, at the first instance and recover the same from the 1st respondent. On such deposit, the appellants 1 to 3 are permitted to withdraw their respective shares of the award amount now



determined by this Court, as per the apportionment adopted by the Tribunal, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. The share of the minor 4th appellant is directed to be deposited in any one of the Nationalised Bank in any interest bearing Fixed Deposit Scheme till the minor attains majority. On such deposit, the 1st appellant, being the mother of the minor 4th appellant, is permitted to withdraw the accrued interest once in three months for the welfare of the minor 4th appellant. The appellants are directed to pay the necessary Court fee if any, for the enhanced amount of compensation. In other aspects, the Award of the Tribunal shall stand confirmed. It is made clear that the appellants are not entitled to any interest for the delay period as per the order of this Court dated 05.10.2018 made in C.M.P.No.15591 of 2018 in C.M.A.SR.No.52732 of 2018. There shall be no order as to costs in this appeal.

Sd/-
Assistant Registrar

// True Copy //

Sub Assistant Registrar

ssi

To

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

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

+1cc to M/s.N.B.Surekha, Advocate, Sr.No.5864

+1cc to Mr.C.Kolanthaiavel, Advocate, Sr.No.5728

C.M.A.No.2368 of 2018

SR-II(CO)
RVM(01/04/2022)