IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.11.2022

CORAM:

THE HONOURABLE **MS.JUSTICE V.M.VELUMANI**
and
THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

C.M.A.No.1977 of 2022

1.Navarathnakumari

2.Deepak

3.Deepika ... Appellants

Vs.

The Joint Commissioner of Police
C/o. Commissioner of Police
Chennai-16. ... Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 02.11.2016 made in M.C.O.P.No.4883 of 2015 on the file of Motor Accident Claims Tribunal, Chief Judge, Small Causes Court, Chennai.

For Appellants : Mr.K.Varadha Kamaraj

For Respondent : Mr.R.Siddharth
Govt. Advocate (CS)

JUDGMENT

(Judgment of the Court was delivered by V.M.VELUMANI,J.)

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 02.11.2016 made in M.C.O.P.No.4883 of 2015 on the file of Motor Accident Claims Tribunal, Chief Judge, Small Causes Court, Chennai.

2.The appellants are the claimants in M.C.O.P.No.4883 of 2015 on the file of Motor Accident Claims Tribunal, Chief Judge, Small Causes Court, Chennai. They filed the said claim petition claiming a sum of Rs.1,30,00,000/- as compensation for the death of one Gyan Chand, who died in the accident that took place on 30.03.2015.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of Eicher van belonging to the respondent and directed the respondent to pay a sum of Rs.5,76,800/- 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 the deceased was aged 49 years at the time of accident, he was doing plastic wholesale business & real estate and was earning a sum of Rs.80,000/- per month. To prove the same, the appellants have filed and marked Income Tax returns of the deceased as Ex.P4. The Tribunal without considering the same, fixed only a meagre sum of Rs.6,000/- per month as notional income of the deceased. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6.Per contra, the learned counsel appearing for the respondent contended that the appellants have not filed any document to prove the actual income of the deceased. In the absence of any material with regard to avocation and income of the deceased, the Tribunal fixed a sum of Rs.6,000/-

per month as notional income of the deceased, which is excessive. The Tribunal after considering all the materials on record, awarded compensation, which is not meagre. The appellants have not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

7.Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the respondent and perused the entire materials available on record.

8.From the materials on record, it is seen that it is the claim of the appellants that the deceased was doing plastic wholesale business at the time of accident and was earning a sum of Rs.40,000/- per month. To substantiate the said claim, they have filed and marked Income Tax Returns of the deceased as Ex.P4. The appellants have not filed any document to prove the avocation and actual income of the deceased. In the absence of any evidence with regard to avocation and income, the Tribunal fixed a sum of Rs.6,000/- per month as notional income of the deceased. The accident is of the year 2015 and the notional income fixed by the Tribunal is meagre. Considering the age and nature of work done by the deceased, a sum of Rs.15,000/- per month is fixed as notional income of the deceased. As per Ex.P2/Post-mortem certificate, the deceased was aged 56 years at the time of accident. The Tribunal, following 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),** rightly applied multiplier '9'. But the Tribunal granted 15% enhancement towards future prospects, which is not correct. The deceased was not in a permanent job. 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 only 10% enhancement towards future prospects. There are three dependants of the deceased and the Tribunal has rightly deducted 1/3rd towards personal expenses. Thus, by fixing Rs.15,000/- as notional monthly income of the deceased and granting 10% enhancement towards future prospects, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.11,88,000/- (Rs.15,000/- + 1500 [Rs.15,000/- X 10%] X 12 X 9 X 2/3). The amounts granted by the Tribunal towards loss of consortium to the 1st appellant and loss of love and affection to the appellants 2 & 3 are hereby enhanced from Rs.25,000/- to Rs.40,000/- and Rs.30,000/- to

Rs.80,000/- (Rs.40,000/- each) respectively as the amounts granted by the Tribunal are meagre. A sum of Rs.25,000/- granted by the Tribunal towards funeral expenses is excessive and the same is hereby reduced to Rs.15,000/-. The Tribunal has not awarded any amount towards loss of estate and hence, a sum of Rs.15,000/- is awarded towards loss of estate. 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 or reduced
1.	Loss of dependency	4,96,800	11,88,000	Enhanced
2.	Loss of consortium to the 1st appellant	25,000	40,000	Enhanced
3.	Loss of love and affection to the appellants 2 & 3	30,000	80,000 (Rs.40,000/- each)	Enhanced
4.	Funeral expenses	25,000	15,000	Reduced
5.	Loss of estate	-	15,000	Granted
	Total	**5,76,800**	**13,38,000**	**Enhanced by Rs.7,61,200/-**

9.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.5,76,800/- is hereby enhanced to Rs.13,38,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. It is made clear that the appellants are not entitled for any interest for the delay period on the amount of Rs.7,61,200/- enhanced by this Court as per the order of this Court dated 25.08.2022 made in C.M.P.No.18028 of 2017 in C.M.A.SR.No.80299 of 2017. The respondent 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. On such deposit, the appellants are permitted to withdraw their respective share of the award amount now determined by this Court, as per the apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn. The appellants are directed to pay the necessary Court fee on the enhanced award amount, if any. No costs.

(V.M.V., J) **(S.M.,J)**
14.11.2022

Index : Yes / No
Internet: Yes / No
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V.M.VELUMANI,J.
and
SUNDER MOHAN,J.

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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.

C.M.A.No.1977 of 2022

14.11.2022