

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.11.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

CMA.No.2131 of 2015

1.C.Mahalakshmi,
2.Minor C.Mathesh,
3.Minor C.Thiyanesh,
(Minor petitioners 2 and 3 were rep.
By their natural guardian next friend
Mother Smt.C.Mahalakshmi).
4.E.Kamatchi
5.G.Ezhumalai .. Appellants / Petitioners

Vs.

1.A.Riyaz Ahmed Patel
2.The Manager(Legal),
ICICI Lombard General Insurance Co.Ltd.,
Arihant Plaza, 1st floor,
No.84/85, Wall Tax Road,
Chennai - 600 003. .. Respondents/ Respondents

(No relief sought against 1st Respondent
hence notice may be dispensed with)

Prayer: This Civil Miscellaneous Appeal is filed under
Section 173 of the Motor Vehicles Act, 1988 against the
Decree and Judgment dated 04-09-2014 made in M.C.O.P.No.329
of 2011 on the file of the II District Judge, (Motor Accident
Claims Tribunal), Kanchipuram.

For Appellants : Mr.C.Prabakaran
For R1 : No appearance

For R2 : Ms.R.Sreevidhya

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for
enhancement of compensation granted by the award dated 04-09-
2014, made in M.C.O.P.No.329 of 2011 on the file of the II
District Judge, (Motor Accident Claims Tribunal),
Kanchipuram.

2.The appellants are the claimants. They have filed M.C.O.P.No.329 of 2011, on the file of the II District Judge, (Motor Accident Claims Tribunal), Kanchipuram, claiming a sum of Rs.30,00,000/- as compensation for the death of E.Chockalingam, husband of the 1st appellant, father of the appellants 2 and 3 and son of the appellants 4 and 5, who died in the accident that took place on 17.10.2011.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving by the driver of the bus belonging to the 1st respondent and awarded a sum of Rs.13,50,000/- as compensation under different heads, directing the 2nd respondent-Insurance Company to pay the same.

4.Not being satisfied with the compensation awarded by the Tribunal, the appellants have come out with this appeal seeking enhancement of the same.

5.The learned counsel for the appellants contended that the deceased was a Sub-Contractor in the L & T Company, supplying water and earning a sum of Rs.25,000/- per month. The appellants have examined the Manager of L & T Company as P.W.2 and also marked Exs.P9, P10 and P12 to prove the income of the deceased. The Tribunal without properly considering the evidence, has fixed Rs.7,500/- per month as notional income, which is very meager. 5 appellants have made claim for compensation. The Tribunal ought to have deducted $\frac{1}{4}$ towards personal expenses of the deceased from the notional income and erred in deducting $\frac{1}{3}$ rd. The appellants are entitled to 50% towards future prospects. The learned counsel for the appellants further contended that no amount was awarded for loss of estate, while the amounts awarded for loss of consortium and funeral expenses are very meager and prayed for enhancement of the compensation.

6.Per contra, the learned counsel for the 2nd respondent contended that the evidence produced by the appellants with regard to the income shows that the deceased was supplying water temporarily to L & T Company. The Tribunal considering the documents and evidence, fixed the notional income of the deceased at Rs.7,500/- per month, which is reasonable and amounts awarded by the Tribunal are not meager and prayed for dismissal of the appeal.

7.Heard the learned counsel for the appellants as well as the 2nd respondent and perused the materials available on record.

8.The appellants have claimed that the deceased was earning Rs.25,000/- per month as Sub-Contractor by supplying

water to L & T Company. P.W.2 examined on behalf of the appellants admitted that there was no routine contract between the deceased and the L & T Company and that the deceased supplied water temporarily for a short period. P.W.2 was not able to explain the amounts paid to the deceased. In view of the above, the Tribunal did not accept the contention of the appellants that the deceased was earning Rs.25,000/- per month.

9.Considering all the materials on record, the Tribunal fixed the notional income of the deceased at Rs.7,500/- per month, which is reasonable. The deceased was aged 30 years at the time of accident, as per post-mortem certificate and other documents produced by the appellants. The Tribunal erroneously calculating the age of the deceased from driving license, fixed the same as 31 years and applied multiplier '16', whereas, the age of the deceased is 30 years and the correct multiplier is 17. The Tribunal has granted 30% enhancement for future prospects. As per the judgment of the Hon'ble Apex Court, the appellants are entitled to 40% enhancement towards future prospects, as the deceased was aged 30 years at the time of accident. There are 5 claimants claiming compensation for the death and only $\frac{1}{4}$ has to be deducted towards personal expenses of the deceased, whereas the Tribunal had erroneously deducted $\frac{1}{3}$ rd towards personal expenses. In view of the same, the amounts awarded under the loss of income is modified as follows:

$$[Rs.7,500 + (40\% \text{ of } Rs.7,500/-)] \times 12 \times 17 \times \frac{1}{4} = Rs.16,06,500/-$$

10.The amounts awarded by the Tribunal towards loss of consortium and funeral expenses are meager. Hence, they are enhanced to a sum of Rs.40,000/- and Rs.15,000/- respectively. The Tribunal has not granted any amounts for loss of estate. Hence, a sum of Rs.15,000/- is granted towards loss of estate. The amounts granted by the Tribunal in all other heads are just and reasonable and hence, they 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.	Compensation for loss of dependency	9,60,000	11,47,500/-	enhanced
2.	Future prospects	2,88,000	4,59,000/-	enhanced

3.	Funeral expenses	7,000	15,000/-	enhanced
4.	Loss of consortium	25,000	40,000/-	enhanced
5.	Loss of love and affection	70,000	70,000/-	confirmed
6	Loss of estate	-	15,000/-	granted
	Total	13,50,000	17,46,500/-	Enhanced by Rs.3,96,500/-

11. With the above modification, this appeal is partly allowed. The 2nd respondent-Insurance Company is directed to deposit the enhanced award amount of Rs.17,46,500/- 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 being made, the claimants 1, 4 and 5 are permitted to withdraw their shares as per the ratio of apportionment fixed by the Tribunal by filing necessary application before the Tribunal. The shares of the minor claimants 2 and 3 are directed to be deposited in any one of the Nationalized Bank in Fixed Deposit till they attain majority. The 1st claimant, mother of the minors are permitted to withdraw interest once in three months directly from the Bank. No costs.

Sd/-/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

ggi/gsa
To

1. The II District Judge,
(Motor Accident Claims Tribunal),
Kanchipuram.

COPY TO

The section officer,
VR Section,

High court Madras

+lcc to Mr.C.Prabakaran, Advocate SR.No. 77316

+lcc to Mr.R.Sreevidhya , Advocate SR.No. 77664

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A.SK(21/01/2019)

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