

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.12.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.2684 to 2686 of 2015

1.M.Nagarani
R.Muthu (Died)

2.M.Selvam

3.M.Suresh ... Appellants in C.M.A.No.2684 of 2015

1.R.Senthamarai

2.V.Ramachandran ... Appellants in C.M.A.No.2685 of 2015

1.N.Pachaiyayee

2.S.Nallathambi ... Appellants in C.M.A.No.2686 of 2015

Vs.

1.K.Kasi

2.M/s.Reliance General Insurance Co. Ltd.,
"Heavitree" Unit No.1, III Floor,
No.23, Spur Tank Road,
Chetpet, Chennai - 600 031. ... Respondents in all C.M.As

Common Prayer:

These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 01.09.2014 made in M.C.O.P.Nos.2831 to 2833 of 2009 on the file of Motor Accidents Claims Tribunal, Special Sub Court - I, Small Causes Court, Chennai.

For Appellants : Mr.T.G.Balachandran (in all C.M.As)

For R2 : Mr.S.Arun Kumar (in all C.M.As)

J U D G M E N T

These Civil Miscellaneous Appeals have been filed for enhancement of compensation granted by common award dated 01.09.2014 made in M.C.O.P.Nos.2831 to 2833 of 2009 on the file of Motor Accidents Claims Tribunal, Special Sub Court - I, Small Causes Court, Chennai.

2.The appellants are claimants in M.C.O.P.Nos.2831 to 2833 of 2009 on the file of Motor Accidents Claims Tribunal, Special Sub Court-I, Small Causes Court, Chennai. They filed the above said claim petitions claiming a sum of Rs.12,00,000/- each as compensation for the death of M.Chinnasamy, R.Krishnamurthy and N.Pachamuthu respectively, who died in the accident that took place on 05.04.2009.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by both the rider of the motorcycle as well as the driver of the lorry belonging to the first respondent and fixed 10% contributory negligence on the part of the rider of the motorcycle and 90% contributory negligence on the part of the driver of the lorry. The Tribunal directed the second respondent-Insurance Company as Insurer of the lorry to pay a sum of Rs.4,52,700/-, Rs.4,52,700/- and Rs.5,17,500/- respectively as 90% of the award amount after deducting 10% from the total award amount, as compensation to the appellants.

4.Not being satisfied with the award dated 01.09.2014 made in M.C.O.P.Nos.2831 to 2833 of 2009, the appellants have come out with the present appeal seeking enhancement of compensation.

5.The learned counsel appearing for the appellants contended that there is no pleading or evidence to prove that rider of the motorcycle was negligence in riding the motorcycle and contributed for accident. Therefore, two pillion riders who also died in the accident cannot be held to have contributed negligence for the accident. The Tribunal failed to consider the contention of the appellant that the deceased were earning a sum of Rs.5,000/- per month. The Tribunal erred in fixing meager sum of Rs.6,000/- per month as notional income including future prospects. The Tribunal erred in taking the age of the mother of the deceased while as per the judgment of the Hon'ble Apex Court, the age of the deceased should be the basis for applying multiplier method. The correct multiplier applicable for arriving at compensation is '18' and prayed for enhancement of compensation under various heads.

6.Per contra, the learned counsel appearing for the second respondent contended that all the three deceased were travelling

in a motorcycle on triples, contrary to the statutory provision. From the manner in which the accident has occurred, it is clear that the rider of the motorcycle was negligent as he dashed against the backside of the lorry and invited the accident. The Tribunal has given valid reason for holding that all the three deceased contributed negligence and rightly fixed 10% contributory negligence on the part of the deceased. The conclusion made by the Tribunal is correct and appellant has not made out any case for enhancement of compensation and prayed for dismissal of all the three appeals.

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

8. From the materials on record, it is seen that admittedly all the three deceased travelled in triples in a motorcycle. The rider of the motorcycle dashed against the backside of the lorry which according to the appellant was due to sudden stop by the driver of the lorry. The Tribunal considering the fact that deceased were travelling as triples and the rider of the motorcycle could have avoided the accident by keeping a reasonable distance and drove the motorcycle at a moderate speed. Based on these finding, the Tribunal has fixed 10% negligence on the part of the deceased. There is no error in the said finding warranting interference by this Court.

9. As far as quantum of compensation is concerned, the learned counsel appearing for the appellants contended that the deceased were working as van driver, mechanic-cum-cleaner and cleaner respectively and were earning a sum of Rs.5,000/- each per month. They have not let in any evidence to substantiate this contention. In the absence of any evidence, the Tribunal has fixed a sum of Rs.6,000/- per month as notional income including future prospects. Considering the fact that the accident occurred in the year 2009 and contention of the learned counsel for the appellants with regard to nature of work, a sum of Rs.5,000/- is fixed as notional income of the deceased and the appellants are entitled to 40% enhancement towards future prospects. All the deceased were bachelors and 50% were deducted towards their personal expenses from the notional income so arrived at. The contention of the learned counsel for the appellant that age of the deceased should be the basis for applying multiplier has considerable force. The Tribunal erred in applying the multiplier based on the age of the mother of the deceased which is not correct. The age of the deceased were 24, 23 and 20 years respectively. In view of the same, the amounts awarded by the Tribunal is modified as follows:

Rs.5,000/- + Rs.2,000/- (40% of Rs.5,000) X 12 X 18 X 1/2 =
Rs.7,56,000/-

The Tribunal has awarded a sum of Rs.20,000/- towards loss of love and affection in all the claim petitions and this Court enhances the same to Rs.40,000/-. A sum of Rs.15,000/- awarded by the Tribunal towards funeral expenses in all the claim petitions are hereby confirmed. The Tribunal has not awarded any amount towards loss of estate. The appellants are entitled to a sum of Rs.15,000/- under this head. Thus, the amounts awarded by the Tribunal in M.C.O.P.Nos.2831 to 2833 of 2009 are modified as follows:

C.M.A.No.2684 of 2015 (M.C.O.P.No.2831 of 2009):

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Pecuniary loss	4,68,000/-	7,56,000/-	enhanced
2.	Loss of love and affection	20,000/-	40,000/-	enhanced
3.	Funeral Expenses	15,000/-	15,000/-	confirmed
4.	Loss of Estate	-	15,000/-	granted
	Total	Rs.5,03,000/- 90% of the award amount comes to Rs.4,52,700/-	Rs.8,26,000/- 90% of the award amount comes to Rs.7,43,400/-	enhanced by Rs.2,90,700/-

The Tribunal has fixed 10% negligence on the part of the rider of the motorcycle. Hence, the second respondent-Insurance Company is directed to pay 90% of the enhanced award amount (i.e., Rs.7,43,400/-). Out of the enhanced award amount, the first appellant being the mother of the deceased is entitled to Rs.5,43,400/- and the second and third appellants being the brothers of the deceased are entitled to Rs.1,00,000/- each.

C.M.A.No.2685 of 2015 (M.C.O.P.No.2832 of 2009):

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Pecuniary loss	4,68,000/-	7,56,000/-	enhanced
2.	Loss of love and affection	20,000/-	40,000/-	enhanced
3.	Funeral Expenses	15,000/-	15,000/-	confirmed
4.	Loss of Estate	-	15,000/-	granted
	Total	Rs.5,03,000/- 90% of the award amount comes to Rs.4,52,700/-	Rs.8,26,000/- 90% of the award amount comes to Rs.7,43,400/-	enhanced by Rs.2,90,700/-

The Tribunal has fixed 10% negligence on the part of the rider of the motorcycle. Hence, the second respondent-Insurance Company is directed to pay 90% of the enhanced award amount (i.e., Rs.7,43,400/-). Out of the enhanced award amount, the first appellant being the mother of the deceased is entitled to Rs.5,00,000/- and the second appellant being the father of the deceased is entitled to Rs.2,43,400/-.

C.M.A.No.2686 of 2015 (M.C.O.P.No.2833 of 2009):

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Pecuniary loss	5,40,000/-	7,56,000/-	enhanced
2.	Loss of love and affection	20,000/-	40,000/-	enhanced
3.	Funeral Expenses	15,000/-	15,000/-	confirmed
4.	Loss of Estate	-	15,000/-	granted
	Total	Rs.5,75,000/- 90% of the award amount comes to Rs.5,17,500/-	Rs.8,26,000/- 90% of the award amount comes to Rs.7,43,400/-	enhanced by Rs.2,25,900/-

The Tribunal has fixed 10% negligence on the part of the rider of the motorcycle. Hence, the second respondent-Insurance Company is directed to pay 90% of the enhanced award amount (i.e., Rs.7,43,400/-). Out of the enhanced award amount, the first appellant being the mother of the deceased is entitled to Rs.4,00,000/- and the second appellant being the father of the deceased is entitled to Rs.3,43,400/-.

10. In the result, these Civil Miscellaneous Appeals are partly allowed and the compensation awarded by the Tribunal at Rs.4,52,700/- (in M.C.O.P.Nos.2831 and 2832 of 2009) and Rs.5,17,500/- (in M.C.O.P.No.2833 of 2009) are hereby enhanced to a sum of Rs.8,26,000/- each in all the three appeals with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The Tribunal has fixed 10% negligence on the part of the rider of the motorcycle and the same is confirmed. Hence, the second respondent-Insurance Company is directed to deposit 90% of the enhanced award amount i.e., Rs.7,43,400/- in all the three appeals with interest and cost, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the appellants/claimants are permitted to withdraw their share of the respective award amount as per the ratio of apportionment fixed by this Court, along with interest and cost, less the amount if any, already withdrawn. No costs.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. Special Subordinate Judge-I,
Motor Accidents Claims Tribunal,
Small Causes Court, Chennai.
2. The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.S.Arun Kumar, Advocate, S.R.No.88469

+3cc to Mr.T.G.Balachandran, Advocate, S.R.No.87743 TO 87745

C.M.A.Nos.2684 to 2686 of 2015

AK(CO)

CS/11/06/2019