

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2553 of 2018

1.K.Mahalakshmi

2.Minor.Akshaya

3.Valliyammal .. Appellants/ Petitioner

(Minor petitioner is represented by mother, guardian,
NF. K.Mahalakshmi, 1st petitioner herein)

Vs.

1.B.Senguttuvan

2.The Divisional Manager,
National Insurance Company Limited,
Door No.110, JN Street,
Puducherry - 605 001. .. Respondents/ Respondents

Prayer: This Civil Miscellaneous Appeal is filed under
Section 173 of Motor Vehicles Act, 1988, against the judgment
and decree dated 25.10.2017 made in M.C.O.P.No.360 of 2016,
on the file of the Motor Accidents Claims Tribunal, I
Additional District Court, Cuddalore.

For Appellants : Mr.R.Sreedhar
For R2 : Mr.S.Vadivel
for R1 : NA

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for
enhancement of compensation granted by the award dated
25.10.2017 made in M.C.O.P.No.360 of 2016, on the file of the
Motor Accidents Claims Tribunal, I Additional District Court,
Cuddalore.

2.Mr.S.Vadivel, the learned counsel takes notice on
behalf of the second respondent/Insurance Company.

3.By consent of both the parties, this appeal is taken
up for final disposal at the admission stage itself.

4.The appellants are the claimants in M.C.O.P.No.360 of 2016, on the file of the I Additional District Court, Cuddalore. They filed the said claim petition claiming a sum of Rs.25,00,000/- as compensation for the death of one Kolanji, who died in the accident that took place on 23.11.2015.

5.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident took place due to the rash and negligent driving by the driver of the motor cycle belonging to the 1st respondent and directed the second respondent/Insurance Company, who is insurer of the first respondent, to pay a sum of Rs.6,70,000/- as compensation to the appellants.

6.Not being satisfied with the amounts granted by the Tribunal, the appellants have come out with this appeal seeking enhancement.

7.The learned counsel appearing for the appellants contended that the deceased was working as mason and was earning a sum of Rs.20,000/- per month. The Tribunal without any basis fixed meager amount of Rs.5,000/- as notional income of the deceased. As per the judgment of the Hon'ble Apex Court, a sum of Rs.7,500/- will be the correct notional income and the same has to be fixed as notional income of the deceased. The Tribunal has not awarded any amount for future prospects and the amounts awarded under different heads are meager and prayed for enhancement of compensation.

8.Per contra, the learned counsel appearing for the second respondent/Insurance company contended that in the absence of any evidence to prove the income of the deceased, the Tribunal has fixed the notional income of the deceased at Rs.5,000/- and there is no error warranting interference by this Court for enhancement. The amounts awarded by the Tribunal under the different heads are not meager and prayed for dismissal of the appeal.

9.Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the second respondent/Insurance Company and perused the materials available on record.

10.From the materials on record, it is seen that the appellants have contended that the deceased was working as a mason and was earning a sum of Rs.20,000/- per month. It is true that the appellants have not produced any documents to substantiate the said contention. At the same time, it is to be taken note of the fact that the respondents have not let in any evidence to disprove the contention of the appellants. Considering the fact that the deceased was working as a mason and the accident occurred on 23.11.2015, the notional income

of the deceased is fixed at Rs.7,500/- per month. The Tribunal has not awarded any enhancement for future prospects. The deceased was aged 40 years at the time of accident. As per the Judgment of the Hon'ble Apex Court reported in 2017(2)TNMAC 609 (SC) (National Insurance Company v. Pranay Sethi), the appellants are entitled to 25% for future prospects. After deducting 1/3rd towards personal expenses of the deceased, loss of dependency is modified as follows:

$$\text{Rs.7,500/-} + (25\% \text{ of Rs.7,500/-}) \times 12 \times 15 \times \frac{2}{3} = \text{Rs.11,25,000/-}$$

A sum of Rs.30,000/- awarded by the Tribunal towards loss of consortium is enhanced to a sum of Rs.40,000/- and a sum of Rs.10,000/- awarded by the Tribunal towards transportation and funeral expenses is enhanced to a sum of Rs.15,000/-. The Tribunal has not awarded any amount towards loss of estate. Therefore, a sum of Rs.15,000/- is awarded towards loss of estate. The amount awarded by the Tribunal under the head of loss of love and affection is just and reasonable and the same is 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	6,00,000	11,25,000	enhanced
2.	Loss of love and affection	30,000	30,000	confirmed
3.	Loss of Consortium	30,000	40,000	enhanced
4.	Transportation and funeral expenses	10,000	15,000	enhanced
5.	Loss of estate	-	15,000	awarded
	Total	6,70,000	12,25,000	enhanced by 5,55,000/-

11. With the above modification, the Civil Miscellaneous Appeal is partly allowed. The compensation of Rs.6,70,000/- awarded by the Tribunal is hereby enhanced to a sum of Rs.12,25,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The

second respondent/Insurance Company is directed to deposit the enhanced award amount, 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, first appellant, being the wife of the deceased, is entitled to a sum of Rs.5,00,000/-, second appellant, being the daughter of the deceased, is entitled to a sum of Rs.4,55,000/- and third appellant, being mother of the deceased, is entitled to a sum of Rs.2,70,000/-. The appellants 1 and 3 are permitted to withdraw their respective shares with accrued interest, after adjusting the amount if any, already withdrawn. The share of the second appellant/minor is directed to be deposited in any one of the nationalised banks till she attains majority and the first appellant, who is mother of the second appellant, is permitted to withdraw the accrued interest once in three months from the bank for the welfare of the minor girl. No costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

krk/kj

To

The Motor Accidents Claims Tribunal
I Additional District Judge,
Cuddalore.

+1cc to Mr.Sreedhar , Advocate SR.No. 78470

+1cc to Mr. S.Vadivel, Advocate SR.No. 78234

CMA.No.2553 of 2018

ASK(09/01/2019)

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