

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2857 of 2018

1. Chandiravadivu

2. Velmurugan .. Appellants / Petitioner

Vs.

1. R.Samikannu

2. The Oriental Insurance Company Ltd.,
Motor TPHUB, Oriental House, Second Floor,
No.115, Broad way, Chennai - 600 108.

.. Respondents / Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 05.04.2018 made in M.C.O.P.No.178 of 2015 on the file of the Motor Accidents Claims Tribunal, Principal Sub Court, Vridhachalam.

For Appellants : Mr.S.Udayakumar

For R2 : Mr.J.Chandran

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 05.04.2018 made in M.C.O.P.No.178 of 2015 on the file of Motor Accidents Claims Tribunal, Principal Sub Court, Vridhachalam.

2.By consent of both the parties, this Civil Miscellaneous Appeal is taken up for final disposal at the admission stage itself.

3.The appellants are the claimants in M.C.O.P.No.178 of 2015 on the file of the Motor Accidents Claims Tribunal, Principal Sub Court, Vridhachalam. They filed the above said claim petition claiming a sum of Rs.10,00,000/- as compensation for the death of their daughter viz.,Selvi.Dhiyasri, who died in the accident that took place on 20.03.2015.

4. According to the appellants, on 20.03.2015, while the deceased Dhiyasri was proceeding by walk along with her mother/first appellant herein towards south from M.Agaram colony bus stop, the driver of the van belonging to the first respondent has driven the same in a rash and negligent manner, dashed against the said minor girl. Due to the said impact, the minor girl sustained head injury and injuries over both legs and hemorrhage. Initially, the said minor girl was treated at Government Hospital, Ulundurpet and referred to Higher centre. She died on the way to hospital. According to the appellants, the accident had occurred only due to rash and negligent driving by the driver of the van belonging to the first respondent. At the time of accident, the minor girl was aged four years and was studying L.K.G.

5. The first respondent filed counter statement and denied all the averments made by the appellants in the claim petition and contended that the daughter of the appellants without noticing the on coming vehicle, crossed the road leaving behind her mother. The accident had occurred only due to the negligence of the mother of the minor girl, first appellant herein, who failed to hold the hands of the girl and failed to walk on the left side of the road without following the traffic rules. Therefore, the first appellant is alone responsible for the accident.

6. The second respondent filed counter statement and denied all the averments made by the appellants in the claim petition and contended that at the time of accident, the van belonging to the first respondent is not insured with the second respondent and the driver of the van did not possess any valid driving license. Therefore, the second respondent is not liable to pay any compensation to the appellants.

7. Before the Tribunal, the first appellant examined herself as P.W.1 and marked ten documents as Exs.P1 to P10. The respondents did not let in any oral and documentary evidence.

8. The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred only due to the rash and negligent driving by the driver of the van bearing Registration No. TN 36 2797 belonging to the first respondent, insured with the second respondent and directed the second respondent/Insurance Company to pay a sum of Rs.3,50,000/- as compensation to the appellants/claimants at the first instance and recover the same from the first respondent.

9. Not being satisfied with the award amount granted by the Tribunal, the appellants/claimants have come out with the present appeal seeking enhancement of compensation.

10. The learned counsel appearing for the appellants contended that the notional income of the deceased fixed by the Tribunal at Rs.15,000/- per annum is very low. The Tribunal did not grant any amount towards future prospects of the deceased. The Tribunal ought to have adopted proper multiplier, while fixing the quantum of compensation. The amounts awarded by the Tribunal towards loss of love and affection and consortium are meager and prayed for enhancement of compensation.

11. Per contra, the learned counsel appearing for the second respondent/Insurance Company contended that the Tribunal considering the age of the deceased as four years at the time of accident, fixed the notional income of the deceased at Rs.15,000/- per annum, which is proper. The amounts awarded by the Tribunal under different heads are not meager and prayed for dismissal of the appeal.

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

13. From the materials on record, it is seen that the deceased was aged four years at the time of accident and was studying L.K.G. The Tribunal considering Ex.P7/Postmortem report, fixed the age of the deceased as four years and fixed the notional income of the deceased at Rs.15,000/- per annum and applied multiplier '15' as per the Schedule. Thus, the Tribunal awarded a sum of Rs.2,25,000/- (Rs.15,000/- X 15) towards loss of dependency and in my opinion, the same is meager. Therefore, this Court fixes the notional income of the deceased at Rs.30,000/- per annum and a sum of Rs.4,50,000/- (Rs.30,000/- X 15) is granted towards loss of dependency. The Tribunal relying on the judgment reported in 2017(2) TN MAC 609(SC) (National Insurance Company Limited versus Pranay Sethi) awarded compensation under the heads of loss of estate, transport charges and funeral expenses, which are in order. As per the above judgment, the appellants are entitled only a sum of Rs.40,000/- towards loss of love and affection. The Tribunal has awarded a sum of Rs.80,000/- under this head and hence, the said sum is hereby reduced to Rs.40,000/-. 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	2,25,000/-	4,50,000/-	enhanced
2.	Loss of Estate	15,000/-	15,000/-	confirmed
3.	Loss of Love and Affection	80,000/-	40,000/-	reduced
4.	Transportation	15,000/-	15,000/-	confirmed
5.	Funeral Expenses	15,000/-	15,000/-	confirmed
	Total	3,50,000/-	5,35,000/-	Enhanced by Rs.1,85,000/-

14. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.3,50,000/- is hereby enhanced to Rs.5,35,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The first appellant being the mother of the deceased is entitled to a sum of Rs.3,55,000/- as compensation and the second appellant being the father of the deceased is entitled to a sum of Rs.1,80,000/- as compensation. The appellants/claimants are directed to pay necessary Court fee if any, on the enhanced compensation. The second respondent/Insurance Company is directed to deposit the enhanced award amount 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/claimants are permitted to withdraw their respective share amount along with interest and costs, after adjusting the amount if any already withdrawn. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kj/krk

To

1) The Motor Accidents Claims Tribunal
Principal Subordinate Judge
Vridhachalam.

2) The Section Officer,
VR Section,
High Court, Chennai.

+1 cc to Mr.J.Chandran, Advocate, S.R.No.85822

+1 cc to Mr.S.Udayakumar, Advocate, S.R.No.86107

C.M.A.No.2857 of 2018

CNR(CO)
SSM(13/03/2019).



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