



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.03.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.10 of 2015

1.M.Boosanammal

2.N.Vanitha

3.V.Vasantha

4.A.Vasuki

5.M.Ravi

6.P.Valarmathi

7.M.Kumar

8.M.Sathiyamoorthy

... Appellants/Petitioners

Vs.

1.Pramodh Kumar.M.

2.IFFCO-TOKIO General Insurance Co. Ltd.,

H.O: Sahas Embassy, No.145/131,

Ground Floor, Nelson Manickam Road,

Metha Nagar, Chennai - 600 029.

... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 24.02.2014 made in M.C.O.P.No.5760 of 2011 on the file of the Motor Accident Claims Tribunal, IV Judge, Small Causes Court, Chennai.

For Appellants

: Mr.S.Gowsik Sundar  
for Mr.A.Shanmugaraj

For R2

: Ms.K.Saraswathi  
for Mr.C.K.Krishnamoorthy



## J U D G M E N T

The Civil Miscellaneous Appeal is filed by the appellants/claimants seeking enhancement of compensation granted by the Tribunal in the award dated 24.02.2014 made in M.C.O.P.No.5760 of 2011 on the file of the Motor Accident Claims Tribunal, IV Judge, Small Causes Court, Chennai.

2.By consent of both the learned counsel appearing for the appellants and 2<sup>nd</sup> respondent-Insurance Company, the appeal is taken up for final disposal at the stage of admission itself.

3.The appellants are claimants in M.C.O.P.No.5760 of 2011 on the file of the Motor Accident Claims Tribunal, IV Judge, Small Causes Court, Chennai. They filed the said claim petition claiming a sum of Rs.4,00,000/- as compensation for the death of one Mark Sagayam, who died in the accident that took place on 29.03.2011. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the rider of the motorcycle belonging to the 1<sup>st</sup> respondent and directed the 2<sup>nd</sup> respondent/Insurance Company to pay a sum of Rs.1,95,000/- as compensation to the 1<sup>st</sup> appellant. Not being satisfied with the amount awarded by the Tribunal, the appellants have come out with the present appeal seeking enhancement of compensation.

4.The learned counsel appearing for the appellants contended that the deceased was working as a security guard and was earning a sum of Rs.4,000/- per month. The Tribunal has erroneously fixed a meagre sum of Rs.3,000/- per month as notional income of the deceased. Eight claimants have filed the claim petition. The Tribunal has deducted 1/3<sup>rd</sup> of the income instead of deducting 1/5<sup>th</sup> towards personal expenses. The amount granted by the Tribunal towards loss of consortium is meagre. The Tribunal has not granted any amount towards loss of estate and prayed for enhancement of compensation.

5. Per contra, Ms.K.Saraswathi, the learned counsel appearing for the 2<sup>nd</sup> respondent-Insurance Company contended that the appellants have not proved the avocation and income of the deceased. The deceased was aged 80 years at the time of the accident. The deceased was only dependent on the appellants. The Tribunal considering the age of the deceased, fixed Rs.3,000/- per month as notional income and awarded compensation, which is not meagre and prayed for dismissal of the appeal.

6.Heard the learned counsel appearing for the appellants as well as learned counsel appearing for the 2<sup>nd</sup> respondent-



7. From the materials available on record, it is seen that the appellants who are the wife, sons and daughters of the deceased have filed claim petition claiming a sum of Rs.4,00,000/- as compensation for the death of one Mark Sagayam and contended that the deceased was working as a security guard and was earning a sum of Rs.4,000/- per month and filed Ex.P6 - pay certificate. The Tribunal has rejected Ex.P6 on the ground that employer of the deceased was not examined and fixed a sum of Rs.3,000/- per month as notional income of the deceased. The accident is of the year 2011. The amount fixed by the Tribunal is meagre and the same is fixed as Rs.4,000/- per month. Eight claimants have filed the claim petition. The Tribunal deducted  $1/3^{rd}$  instead of  $1/5^{th}$  towards personal expenses. The amount granted by the Tribunal towards pecuniary loss is modified to Rs.1,92,000/- ( $Rs.4,000/- \times 12 \times 5 \times 4/5$ ). The amount granted by the Tribunal towards loss of consortium for the 1<sup>st</sup> appellant, is meagre and hence, the same is enhanced to Rs.40,000/-. The Tribunal has granted a sum of Rs.75,000/- under conventional heads. In view of the same, the appellants are not entitled for any enhancement under conventional heads. The amounts awarded by the Tribunal under other heads are just and reasonable and the same 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.   | Pecuniary loss                                      | 1,20,000                        | 1,92,000                          | Enhanced                               |
| 2.   | Loss of consortium to the 1 <sup>st</sup> appellant | 10,000                          | 40,000                            | Enhanced                               |
| 3.   | Loss of love and affection to the appellants        | 50,000                          | 50,000                            | Confirmed                              |
| 4.   | Funeral expenses                                    | 15,000                          | 15,000                            | Confirmed                              |
|      | Total                                               | Rs.1,95,000 /-                  | Rs.2,97,000/-                     | Enhanced by Rs.1,02,000/-              |



8. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,95,000/- is hereby enhanced to Rs.2,97,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellants-claimants is directed to pay necessary Court fee, if any, on the enhanced compensation. The 2<sup>nd</sup>-respondent Insurance Company is directed to deposit the enhanced 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 1<sup>st</sup> appellant is permitted to withdraw the enhanced award amount, along with interest and costs, less the amount if any, already withdrawn by filing necessary application before the Tribunal. No costs

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The IV Judge,  
Small Causes Court,  
Motor Accidents Claims Tribunal,  
Chennai.

2. The Section Officer,  
V.R. Section,  
High Court, Madras.

+1cc to M/s.C.R.Krishnamoorthy, Advocate Sr.27938  
+1cc to Mr.A.Shanmugaraj, Advocate Sr.28623

C.M.A.No.10 of 2015

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srg 28/08/2019