

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.03.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1041 of 2015
and M.P.No.1 of 2015

The Divisional Manager

M/s.New India Assurance Co. Ltd.,
Ranipet.

.. Appellant

Vs.

1.Anuradha

2.Minor R.Suvetha

3.Minor.R.Muthulakshmi @ Logeswari
(minor respondents 2 and 3 are rep. by
their mother 1st respondent)

4.Indirani

5.Ellappan

6.M/s.Gowdham Finance

No.472, Vandavasi road

Mamandoor village

Cheyyar Taluk

Tiruvannamalai District.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 04.01.2014 made in M.C.O.P.No.185 of 2012 on the file of Motor Accident Claims Tribunal, Sub Court, Cheyyar.

For Appellant : Mr.J.Chandran

For R1 to R5 : Mr.K.G.Senthil Kumar

For R6 : No appearance

J U D G M E N T

The Civil Miscellaneous Appeal is filed against the award dated 04.01.2014 made in M.C.O.P.No.185 of 2012 on the file of Motor Accident Claims Tribunal, Sub Court, Cheyyar.

2.The appellant/Insurance Company is 2nd respondent in M.C.O.P.No.185 of 2012 on the file of Motor Accident Claims Tribunal, Sub Court, Cheyyar. The respondents 1 to 5 filed the said claim petition claiming a sum of Rs.9,95,000/- as compensation for the death of one Ramamoorthy, who died in the accident that took place on 06.03.2012. 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 6th respondent and directed the appellant/Insurance Company being insurer of the said motorcycle to pay a sum of Rs.8,09,000/- as compensation to the respondents 1 to 5. Against the said award dated 04.01.2014 made in M.C.O.P.No.185 of 2012, the appellant has come out with the present appeal.

3.The learned counsel appearing for the appellant/Insurance Company contended that the Tribunal has erred in awarding a sum of Rs.8,09,000/- for the death of 30 years old, which is excessive and unsustainable. The Tribunal ought to have held that the accident has occurred only due to rash and negligent act of the deceased and reduced the compensation under Section 140 of Motor Vehicles Act. The Tribunal has failed to note that F.I.R. was lodged by one Devendran, the brother of the deceased. In the complaint, he has stated that at the time of accident, one four wheeler came. During investigation, the police recorded the statements under Section 161 of Cr.P.C. from four persons, who had stated that the accident occurred due to unknown four wheeler. The accident register was marked as Ex.R1 through R.W.1/Administrative Officer of the appellant, which established that the accident occurred while the injured was traveling in a two wheeler along with other persons hit by a vehicle (not known). The Tribunal ought to have seen that the respondents 1 to 5 suppressed the material aspect of involvement of another vehicle and held that the respondents 1 to 5 have not come out with correct manner of accident. The Tribunal has erred in fixing notional income of the deceased at Rs.4,500/- per month, awarded excessive amount and prayed for setting aside the award of the Tribunal.

4.Per contra, the learned counsel appearing for the respondents 1 to 5 contended that in the F.I.R., it has been stated that the accident occurred only due to rash and negligent riding by the rider of the motorcycle belonging to the 6th respondent. The respondents 1 to 5 examined P.W.2/eye-witness, marked Ex.P1/F.I.R., proved that the accident occurred only due to rash and negligent riding by the rider of the motorcycle and prayed for dismissal of the appeal.

5.Heard the learned counsel appearing for the appellant as

well as the respondents 1 to 5 and perused all the materials available on record.

6. From the materials available on record, it is seen that the contention of the respondents 1 to 5 is that the rider of the motorcycle belonging to the 6th respondent drove the motorcycle in a rash and negligent manner and dashed against the tree. Due to the said impact, the deceased, who was a pillion rider in the motorcycle, was thrown out, sustained injuries and died. To substantiate this contention, the respondents 1 to 5 examined P.W.2-witness, who deposed that the accident occurred only due to rash and negligent riding by the rider of the motorcycle. The respondents 1 to 5 marked Ex.P1/F.I.R., which is registered against the rider of the motorcycle. The Tribunal considered the contents of F.I.R., which is inconsonance with the claim of the respondents 1 to 5 and evidence of P.W.2. The appellant has not let in any contra evidence to the evidence of P.W.2 and F.I.R. As far as Ex.R1/copy of accident register is concerned, the appellant has not examined the author of Ex.R1 and has not let in any evidence as to who furnished the details mentioned in Ex.R1. The accident register is not a conclusive proof. The appellant has not examined either the investigating officer, who recorded the statements under Section 161 Cr.P.C. or any one of the four persons, who have alleged to have given statements to the police. The appellant has not proved the involvement of the four wheeler in the accident as alleged by them. The Tribunal considering the above materials, has rightly held that the accident occurred only due to rash and negligent riding by the rider of the motorcycle belonging to the 6th respondent insured with the appellant. There is no error in the said finding of the Tribunal warranting interference by this Court.

7. As far as quantum of compensation is concerned, the respondents 1 to 5 have stated that the deceased was aged 29 years at the time of accident, he was working as a collection agent in 6th respondent finance company and was earning a sum of Rs.8,000/- per month. P.W.1/wife of the deceased has deposed to that effect. The appellant has not let in any evidence to disprove the contentions of the respondents 1 to 5 with regard to avocation and income of the deceased. The Tribunal having held that no rebuttal or contra evidence was let in by the appellant, erred in fixing a sum of Rs.4,500/- per month as notional income of the deceased.

8. In the claim petition, the Tribunal and the Court must award just compensation. The compensation awarded should not be meagre and at the same time, it should not be windfall and exorbitant. The Tribunal and the Courts have power to grant compensation more than the amount claimed by the claimants in

the facts and circumstances of the case. As per the direction of this Court, the respondents 1 and 4 appeared along with respondents 2 and 3/minors. They are in very pathetic condition and this Court is of the view that they are entitled to more compensation than total compensation awarded by the Tribunal. Considering the materials on record, this Court is of the view that this is a fit case to invoke Order 41 Rule 33 of C.P.C., Section 151 C.P.C. and Article 227 of the Constitution of India to enhance the compensation awarded by the Tribunal even though the respondents 1 to 5 have not filed any appeal or cross-appeal. This issue was considered by the Division Bench of this Court in the judgment in C.M.A.No.420 of 2013, dated 16.04.2018 (The New India Assurance Company Ltd., vs. R.Nagaraj and others). In para-11, the Division Bench has held as follows:

"11. ... Though the Insurance Company has filed the appeal, the facts and circumstances enable this Court to enhance the compensation. Accordingly, award of the Tribunal (i.e.,) Rs. 20,93,500/- is enhanced to Rs.45,00,000/- invoking Order 41 Rule 33 of CPC and Section 151 and Article 227 of Constitution of India. The provisions of the Motor Vehicles Act are beneficial in nature and what is required to be awarded is just and reasonable compensation. Therefore, even in the absence of appeal/cross-appeal by the claimant, this Court has got power and jurisdiction to enhance the compensation, which has been recognised by the Honourable Supreme Court in Nagappa V. Gurdayal Singh reported in MANU/SC/1107/2002 : 2004 (2) TN MAC 398 (SC)."

9.The deceased was aged 29 years and the accident has occurred in the year 2012. Considering the age of the deceased and year of the accident, this Court fixes notional income of the deceased at Rs.6,500/- per month. The Tribunal has not granted any enhancement towards future prospects. The respondents 1 to 5 are entitled to 40% enhancement towards future prospects. The Tribunal applied multiplier 18 and the correct multiplier is 17. After deducting 1/4th towards personal expenses, the pecuniary loss is modified as follows:
$$\text{Rs.6,500/-} + 2600 \text{ (Rs.6,500/-} \times 40\%) \times 12 \times 17 \times \frac{3}{4} = \text{Rs.13,92,300/-}$$

A sum of Rs.10,000/- and Rs.20,000/- granted by the Tribunal under the heads of funeral expenses and loss of consortium are meagre and the same are hereby enhanced to Rs.15,000/- and Rs.40,000/- respectively. A sum of Rs.10,000/- awarded by the Tribunal towards loss of love and affection to the 1st respondent

is hereby set aside. A sum of Rs.10,000/- each awarded by the Tribunal towards loss of love and affection to the respondents 2 and 3/minors are meagre and the same is enhanced to Rs.40,000/- each. A sum of Rs.10,000/- each awarded by the Tribunal towards loss of love and affection to the respondents 4 and 5 are meagre and the same is enhanced to Rs.20,000/- each. The Tribunal has not awarded any amount towards loss of estate. A sum of Rs.15,000/- is granted towards loss of estate. 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	7,29,000	13,92,300	Enhanced
2.	Funeral expenses	10,000	15,000	Enhanced
3.	Loss of consortium	20,000	40,000	Enhanced
4.	Loss of love and affection to the 1 st respondent	10,000	-	Set aside
5.	Loss of love and affection to the respondents 2 & 3/minors and respondents 4 and 5	40,000	80,000 40,000	Enhanced
6.	Loss of estate	-	15,000	Granted
	Total	8,09,000	15,82,300	Enhanced by Rs.7,73,300/-

10.In the result, this Civil Miscellaneous Appeal is

dismissed and the compensation awarded by the Tribunal at Rs.8,09,000/- is hereby enhanced to Rs.15,82,300/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The respondents 1 to 5-claimants are directed to pay necessary Court fee, if any, on the enhanced compensation. The 1st respondent being wife of the deceased is entitled to Rs.6,22,300/-, respondents 2 and 3, being daughters of the deceased are entitled to Rs.3,70,000/- each and the respondents 4 and 5 being parents of the deceased are entitled to Rs.1,10,000/- each. The appellant-Insurance Company is directed to deposit the compensation 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, to the credit of M.C.O.P.No.185 of 2012 on the file of Motor Accident Claims Tribunal, Sub Court, Cheyyar. On such deposit, the Tribunal is directed to deposit the share of minors/respondents 2 and 3 in any one of the Nationalised Bank till the minors attain majority. The 1st respondent being the mother of the minors/respondents 2 and 3 is permitted to withdraw the accrued interest once in three months for the welfare of the minors. The Tribunal is directed to deposit the shares of the respondents 1, 4 and 5/claimants 1, 4 and 5 directly to their account maintained in State Bank of India, Korukkai Branch, Tiruvannamalai District, in following account numbers, within two weeks thereafter.

Name of the claimants	Name of the Bank	IFSC code	Account Nos.
M.Anuradha	State Bank of India, Korukkai, Tiruvannamalai District	SBIN0007792	30760520689
Indirani and Ellappan	State Bank of India, Korukkai, Tiruvannamalai District	SBIN0007792	Joint A/C.No. 32260166993

No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

kj

To

1.The Subordinate Judge
Motor Accidents Claims Tribunal, Cheyyar.

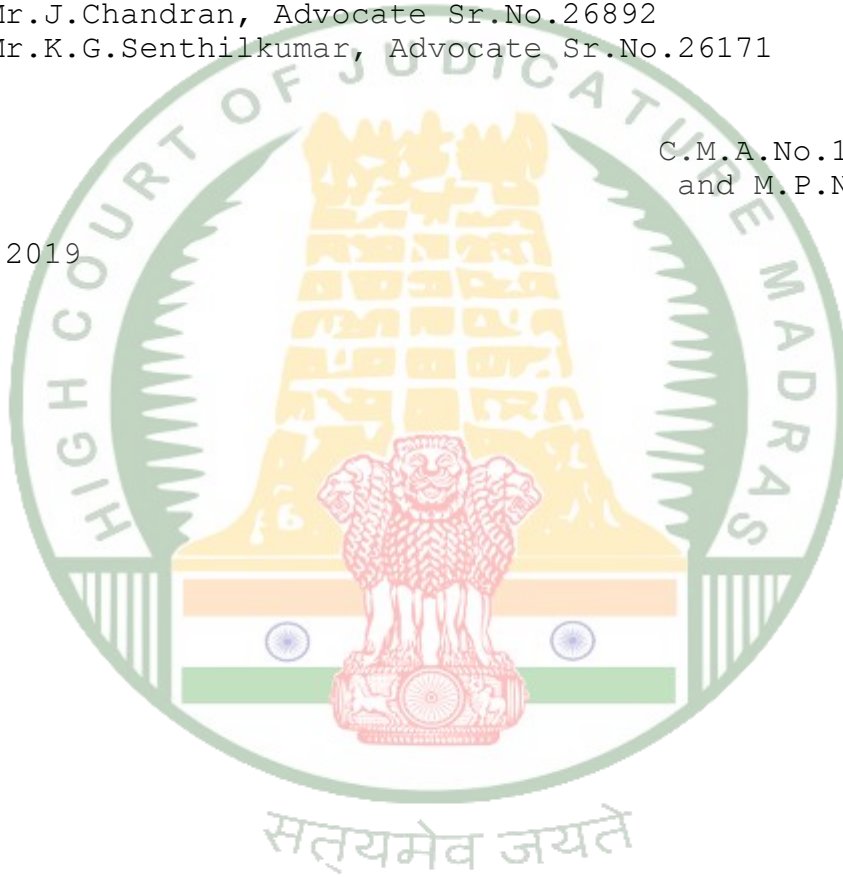
2.The Section Officer
V.R.Section, High Court, Chennai.

+1 cc to Mr.J.Chandran, Advocate Sr.No.26892

+1 cc to Mr.K.G.Senthilkumar, Advocate Sr.No.26171

C.M.A.No.1041 of 2015
and M.P.No.1 of 2015

EV(CO)
CSL/02.04.2019



WEB COPY