



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.03.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.107 of 2015

Indrarajan

.. Appellant / 2nd Petitioner

Vs.

1.Mylan Suppliers,  
191-4, Mani Building, Main Road,  
Kolapakkam, Chennai - 48.

2.TATA AIG General Insurance Company Limited,  
First Commander in Chief Road, Egmore,  
Chennai - 8. .. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 30.07.2014 made in M.C.O.P.No.93 of 2010 on the file of the Motor Accident Claims Tribunal, Sub Court, Namakkal.

For Appellant : Mr.R.Nalliyappan

For R2 : Mrs.C.Harini  
for Mr.M.B.Gopalan

#### J U D G M E N T

The Civil Miscellaneous Appeal is filed by the appellant/claimant seeking enhancement of compensation granted by the Tribunal in the award dated 30.07.2014 made in M.C.O.P.No.93 of 2010 on the file of the Motor Accident Claims Tribunal, Sub Court, Namakkal.

2.The appellant is claimant in M.C.O.P.No.93 of 2010 on the file of the Motor Accident Claims Tribunal, Sub Court, Namakkal. Initially one Sankar filed the said claim petition, claiming a sum of Rs.20,00,000/- as compensation for the injuries sustained by him in the accident that took place on 26.10.2008. Pending claim petition, the said Sankar died and his brother was impleaded as appellant. 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/



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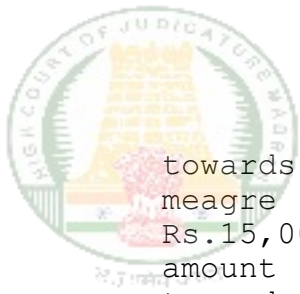
Insurance Company being the insurer of the said motorcycle to pay a sum of Rs.11,90,322/- as compensation to the appellant. Not being satisfied with the amount awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

3.The learned counsel appearing for the appellant contended that the deceased was working as a manager in crusher company and was earning a sum of Rs.7,000/- per month. The deceased was aged 29 years at the time of the accident. The Tribunal has erroneously fixed a meagre sum of Rs.3,000/- as notional income and no enhancement was granted towards future prospects. The accident has occurred on 26.10.2008. Due to the injuries, he went to coma stage and died on 30.07.2010. The Tribunal has not awarded any amounts towards pain & suffering and attendant charges. The amounts granted by the Tribunal towards loss of love and affection and funeral expenses are meagre and no amount was granted towards loss of estate and prayed for enhancement of compensation.

4. Per contra, Mrs.C.Harini, the learned counsel appearing for the 2<sup>nd</sup> respondent/Insurance Company contended that the appellant has not filed any documents to prove the income and avocation of the deceased. In the absence of any materials, the Tribunal has rightly fixed notional income of the deceased at Rs.3,000/- per month and granted compensation. The appellant is not entitled for any compensation towards pain & suffering and attendant charges. The amounts granted by the Tribunal are not meagre and prayed for dismissal of the appeal.

5.Heard the learned counsel appearing for the appellant as well as the 2<sup>nd</sup> respondent-Insurance Company and perused all the materials available on record.

6.From the materials available on record, it is seen that the appellant has contended that the deceased was working as a manager in crusher company and was earning a sum of Rs.7,000/- per month. The appellant failed to produce the documents to substantiate the said contention. In the absence of any material, the Tribunal has fixed notional income of the deceased at Rs.3,000/- per month. The accident is of the year 2008. The notional income fixed by the Tribunal is meagre and the same is enhanced to Rs.6,500/- per month. The deceased was aged 29 years at the time of the accident. The Tribunal has not granted any enhancement towards future prospects. The appellant is entitled to 40% enhancement towards future prospects. The Tribunal erroneously applied multiplier '18'. The correct multiplier is '17'. The amount granted by the Tribunal towards loss of income is modified to Rs.9,28,200/-  $[(Rs.6,500/- + 2600 (Rs.6,500/- \times 40\%) \times 12 \times 17 \times 1/2)]$ . The amount awarded by the Tribunal



towards loss of love and affection and funeral expenses are meagre and hence, the same are enhanced to Rs.40,000/- and Rs.15,000/- respectively. The Tribunal has not awarded any amount towards loss of estate. A sum of Rs.15,000/- is granted towards loss of estate. The amounts awarded by the Tribunal under other heads are 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 income             | 3,24,000                        | 9,28,200                          | Enhanced                               |
| 2.   | Loss of love and affection | 10,000                          | 40,000                            | Enhanced                               |
| 3.   | Funeral expenses           | 10,000                          | 15,000                            | Enhanced                               |
| 4.   | Medical expenses           | 8,46,322                        | 8,46,322                          | Confirmed                              |
| 5.   | Loss of estate             | -                               | 15,000                            | Granted                                |
|      | Total                      | Rs.11,90,322/-                  | Rs.18,44,522/-                    | Enhanced by Rs.6,54,200/-              |

8. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.11,90,322/- is hereby enhanced to Rs.18,44,522/- together along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant-claimant 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 appellant is permitted to withdraw the enhanced award amount along with interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-  
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

mtl



To

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

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

+1 cc to M/s.M.B.Gopalan, Advocate, S.R.No.28900

+1 cc to Mr.R.Nalliyappan, Advocate, S.R.No.28477

C.M.A.No.107 of 2015

PP(CO)  
SSM(28/08/2019)