

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.03.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1180 of 2015

1.V.Swaminathan @ Arun  
2.S.Gomathi

.. Appellants/ Petitioners

Vs.

1.C.Sankar  
2.P.Dayalan

3.M/s.Bajaj Allianz General Insurance Company Ltd.  
No.25/26, Nungambakkam, College road  
Chennai-600 006.

4.V.Meenakshi @ Subhasree  
5.Minor Bhagavathi

.. Respondents

(Respondents 1 and 2 remained exparte  
before the Tribunal and hence, notice  
may be dispensed with)

(Cause title accepted vide order of Court  
dated 08.04.2015 made in M.P.No.1 of  
2015 in C.M.A.SR.No.93684 of 2014)

Prayer: This Civil Miscellaneous Appeal is filed under  
Section 173 of Motor Vehicles Act, 1988, against the judgment  
and decree dated 02.04.2014 made in M.C.O.P.No.3063 of 2011  
on the file of the Motor Accident Claims Tribunal, III Judge,  
Small Causes Court at Chennai.

|                |   |                   |
|----------------|---|-------------------|
| For Appellants | : | Mr.MA.P.Thangavel |
| For R3         | : | Mr.S.Manohar      |
| For R1 and R2  | : | No Appearance     |

## 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 02.04.2014 made in M.C.O.P.No.3063 of 2011 on the file of the Motor Accident Claims Tribunal, III Judge, Small Causes Court at Chennai.

2.The appellants are claimants in M.C.O.P.No.3063 of 2011 on the file of the Motor Accident Claims Tribunal, III Judge, Small Causes Court at Chennai. They filed the said claim petition claiming a sum of Rs.50,00,000/- as compensation for the death of one Vasudevan, who died in the accident that took place on 14.10.2010. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the 1<sup>st</sup> respondent/driver of the tipper lorry belonging to the 2nd respondent and directed the 3<sup>rd</sup> respondent/Insurance Company to pay a sum of Rs.30,87,000/- as compensation to the appellants. Not being satisfied with the amount awarded by the Tribunal, the appellants have come out with the present appeal seeking enhancement of compensation.

3.The learned counsel appearing for the appellants/claimants contended that the Tribunal failed to note that at the time of accident, the deceased was aged 45 years and was working as a Head messenger in State Bank of India, Chennai and was earning a sum of Rs.20,000/- per month. The Tribunal ought to have awarded 100% enhancement instead of 50% enhancement towards future prospects. There are four dependants and the Tribunal ought to have deducted 1/4<sup>th</sup> instead of 1/3<sup>rd</sup> towards personal expenses. The amounts awarded by the Tribunal towards loss of love and affection, loss of consortium and funeral expenses are meagre. The Tribunal has not awarded any amounts towards transportation and loss of estate and prayed for enhancement of compensation.

4.Per contra, the learned counsel appearing for the 2<sup>nd</sup> respondent/Insurance Company contended that the Tribunal has awarded a sum of Rs.50,000/- and Rs.25,000/- towards loss of consortium to the 4<sup>th</sup> respondent and funeral expenses respectively, which are excessive. The appellants have not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

5. Heard the learned counsel appearing for the appellants as well as learned counsel appearing for 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 appellants have contended that the deceased was working as a Head messenger in State Bank of India and was earning a sum of Rs.20,000/- per month. To prove the same, they have marked Ex.P11/pay slip. The Tribunal considering the materials available on record, has fixed a sum of Rs.20,000/- per month as notional income of the deceased and awarded 30% enhancement towards future prospects. The Tribunal deducted 1/3<sup>rd</sup> towards personal expenses, which is not correct. There are four dependants and instead of 1/3<sup>rd</sup>, 1/4<sup>th</sup> has to be deducted towards personal expenses. The pecuniary loss awarded by the Tribunal is modified to Rs.32,76,000/- (Rs.20,000/- + 6000 (Rs.20,000/- X 30%) X 12 X 14 X 3/4). A sum of Rs.50,000/- and Rs.25,000/- awarded by the Tribunal towards loss of consortium to the 4<sup>th</sup> respondent and funeral expenses respectively are excessive and the same are hereby reduced to Rs.40,000/- and Rs.15,000/- respectively. The Tribunal has awarded a sum of Rs.25,000/- each towards loss of love and affection to the appellants 1 & 2/son & mother of the deceased and respondents 4 & 5/wife and daughter of the deceased and the same is set aside. A sum of Rs.25,000/- is awarded towards loss of love and affection to the 2<sup>nd</sup> appellant/mother of the deceased. Considering the fact that the 1<sup>st</sup> appellant and 5<sup>th</sup> respondent have lost their father, this Court awards a sum of Rs.40,000/- each towards loss of love and affection to the 1<sup>st</sup> appellant and 5<sup>th</sup> respondent. The Tribunal has not awarded any amount towards loss of estate. This Court awards a sum of Rs.15,000/- 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 | 29,12,000                       | 32,76,000                         | Enhanced                               |

|    |                                                                                            |                |                |                           |
|----|--------------------------------------------------------------------------------------------|----------------|----------------|---------------------------|
| 2. | Loss of consortium to the 1 <sup>st</sup> appellant                                        | 50,000         | 40,000         | Reduced                   |
| 3. | Loss of love and affection to the appellants 1 & 2 and respondents 4 and 5                 | 1,00,000       | -              | Set aside                 |
| 4. | Funeral expenses                                                                           | 25,000         | 15,000         | Reduced                   |
| 5. | Loss of love and affection to the 1 <sup>st</sup> appellant and 5 <sup>th</sup> respondent | -              | 80,000         | Granted                   |
| 6. | Loss of love and affection to the 2 <sup>nd</sup> appellant                                | -              | 25,000         | Granted                   |
| 7. | Loss of estate                                                                             | -              | 15,000         | Granted                   |
|    | Total                                                                                      | Rs.30,87,000/- | Rs.34,51,000/- | Enhanced by Rs.3,64,000/- |

7. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.30,87,000/- is hereby enhanced to Rs.34,51,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellants/claimants are directed to pay necessary Court fee, if any, on the enhanced compensation. The 1<sup>st</sup> appellant and 5<sup>th</sup> respondent being son and daughter of the deceased are entitled to a sum of Rs.8,91,000/- each, 2<sup>nd</sup> appellant being mother of the deceased is entitled to a sum of Rs.3,91,000/- and the 4<sup>th</sup> respondent being wife of the deceased is entitled to a sum of Rs.12,78,000/- as compensation. The 3<sup>rd</sup> respondent/Insurance Company is directed to deposit the modified 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 2<sup>nd</sup> appellant and 4<sup>th</sup> respondent are permitted to withdraw their respective share of the award amount along with proportionate interest and costs, less the amount if any, already withdrawn. The share of the minors/1<sup>st</sup> appellant and 5<sup>th</sup> respondent is directed to be deposited in any one of the Nationalised Bank till the minors attain majority. The 2<sup>nd</sup> appellant being grand mother of the 1<sup>st</sup> appellant and the 4<sup>th</sup> respondent being mother of the 5<sup>th</sup> respondent are permitted to withdraw their respective accrued interest once in three months for the welfare of the minors. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

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

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

+1cc to Mr.S.Manohar , Advocate SR.No. 29934

+1cc to Mr.Ma.P.Thangavel , Advocate SR.No. 30271

C.M.A.No.1180 of 2015

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