IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No. 1297 of 2015

1.N.Geetha
2.Mahalakshmi (Minor) .. Appellants/Petitioners
(Minor 2nd appellant rep. By her mother, 1st appellant)

Vs.

1.S.Nagarajan

2.The ICICI Lombard Motor Insurance Co. Ltd.,
No.140, 2nd and 3rd Floor,
Chottabhai Centre,
Nungambakkam High Road,
Chennai 600 034. .. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 21.08.2014, made in M.C.O.P.No.5218 of 2012, on the file of the III Small Causes Court, (Motor Accident Claims Tribunal), Chennai.

For Appellants : Mr.T.G.Ravichandran

For Respondents: Ms.R.Sreevidhya (for R2)

J U D G M E N T

This appeal has been filed seeking enhancement of the compensation granted by the award dated 21.08.2014, made in M.C.O.P.No.5218 of 2012, on the file of the III Small Causes Court, (Motor Accident Claims Tribunal), Chennai.

2.The appellants-claimants filed M.C.O.P.No.5218 of 2012, on the file of the III Small Causes Court, (Motor Accident Claims Tribunal), Chennai, claiming a sum of Rs.12,30,000/- as compensation for the death of one N.Mohanraj, who died in the accident that took place on 02.04.2012.

3.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 1st respondent and dismissed the claim petition as against the 2nd appellant and directed the 2nd respondent-Insurance Company to pay a sum of Rs.7,92,000/- as compensation to the 1st appellant.

4.Challenging the portion of the award dismissing the claim petition as against the 2nd appellant and not being satisfied with the amounts awarded by the Tribunal in the award dated 21.08.2014, made in M.C.O.P.No.5218 of 2012, the appellants have come out with the present appeal.

5.Learned counsel appearing for the appellants contended that the the deceased was a 1st year student of B.C.A course and was working as a Computer Operator and earning a sum of Rs.12,000/- per month. The Tribunal erroneously fixed a meagre sum of Rs.7,000/- as the monthly income of the deceased and wrongly deducted ½ towards personal expenses of the deceased. The Tribunal has not considered the future prospects of the deceased and has not awarded compensation to the minor sister, who is the dependant of the deceased. In any event, the total compensation awarded by the Tribunal is meagre and prayed for enhancement of the same.

6.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal considering the deceased being a minor, rightly applied the multiplier depending on the age of the mother. In the absence of any material evidence to prove his income, the Tribunal fixed monthly income at Rs.3,500/- and awarded just compensation towards pecuniary loss. In any event, the total compensation awarded by the Tribunal is not meagre and prayed for dismissal of the of the appeal.

7.Heard learned counsel appearing for the appellants as well as the 2nd respondent and perused the materials available on record.

8.From the materials on record, it is seen that the Tribunal has dismissed the claim petition as against the 2nd appellant on the ground that the 2nd appellant who is the minor sister of the deceased is not the dependent and only the 1st appellant, mother of the deceased is dependent of the deceased. The said finding of the Tribunal is erroneous. It is well settled that minor sister is also dependent of the deceased brother. Hence, the dismissal of the claim petition as against the 2nd appellant is set aside and the 2nd respondent-Insurance Company is directed to pay compensation to both the appellants.

9.As far as the quantum of compensation is concerned, it is the claim of the appellants that the deceased was a bachelor, aged 19 years, and was studying 1st year B.C.A at the time of accident and was working as a part time Computer Operator and earning a sum of Rs.12,000/- per month. The Tribunal considering the sports certificates and statement of marks marked as Ex.P10, fixed the notional income of the deceased at Rs.7,000/- per month. The said amount is meagre. Considering the age and qualification of the deceased, it would be appropriate to fix the notional income of the deceased at Rs.8,000/- per month. The deceased was aged 19 years at the time of accident and hence, the appellants are entitled for 40% enhancement towards future prospectus. The Tribunal has erroneously adopted the multiplier '16' taking into consideration the age of the mother. As per the judgment of the Hon'ble Apex Court reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and others], the age of the deceased is basis for applying multiplier and the correct multiplier applicable is '18'. The deceased died as a bachelor. Hence, deducting 50% towards personal expenses of the deceased, the compensation granted by the Tribunal towards pecuniary loss is modified to Rs.12,09,600/- {[Rs.8,000/- + Rs.3,200/- (40% of Rs.8,000/-)] x 12 x 18 x 50%}. The amounts awarded by the Tribunal towards loss of love and affection and funeral expenses are excessive. The appellants are entitled to only Rs.40,000/- each towards loss of love and affection and Rs.15,000/- towards funeral expenses. The Tribunal has not awarded any amount towards loss of estate. A sum of Rs.15,000/- is awarded 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 income	6,72,000/-	12,09,600/-	enhanced
2.	Loss of love and affection	1,00,000/-	80,000/-	reduced
3.	Funeral expenses	20,000/-	15,000/-	reduced
4.	Loss of estate	-	15,000/-	granted
	Total	7,92,000/-	13,19,600/-	Enhanced by Rs.5,27,600/-

10.In the result, the appeal is allowed and the amount awarded by the Tribunal at Rs.7,92,000/- is enhanced to Rs.13,19,600/- along with interest and costs. The 2nd respondent

Insurance Company is directed to deposit the enhanced award amount, now determined by this Court, along with interest and costs, within a period of eight weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.5218 of 2012. On such deposit, 1st appellant/mother of the deceased is entitled to a sum of Rs.9,23,720/- (70% of the award amount) and 2nd appellant/sister of the deceased is entitled to a sum of Rs.3,95,880/- (30% of the award amount). The 1st appellant is permitted to withdraw her share of the award amount, along with proportionate interest and costs, as per the ratio of apportionment fixed by the Tribunal, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The share of the minor 2nd appellant is directed to be deposited in any one of the Nationalized Bank, till the minor attains majority. The 1st appellant, mother of the minor 2nd appellant is permitted to withdraw the accrued interest, once in three months for the welfare of the minor 2nd appellant. The appellants are directed to pay the court fee, if any, on the enhanced amount of Rs.5,27,600/-. No costs.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

gsa

To

1.The III Judge,
Small Causes Court,
(Motor Accident Claims Tribunal),
Chennai.

Copy To

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

+1cc to Mr.T.G.Ravichandran, Advocate, S.R.No. 101054
+1cc to Mr.R.Sreevidhya, Advocate, S.R.No. 101754

RJI(CO)
GN(21/01/2021)