

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1176 of 2016

1.Rekha

2.Sai Lakshmi (minor) .. Appellants/Claimants
(Represented by her mother as
natural guardian and next friend R1)

Vs.

1.C.Saravanan
2.Bharati AXA General Insurance Company Limited,
Metro Plaza, 2nd Floor,
No.162, Anna Salai,
Chennai 600 002. .. Respondents/Respondents

(R1 set exparte in the Trial Court)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 22.01.2016 made in M.C.O.P.No.3580 of 2013 on the file of the Motor Accident Claims Tribunal, the learned Chief Judge, Small Causes Court, Chennai.

For Appellants : M/s.A.Subadra for M/s.M.Malar
For R2 : Mr.K.Poomalai
For R1 : Exparte

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation of the award dated 22.01.2016 made in M.C.O.P.No.3580 of 2013 on the file of the Motor Accident Claims Tribunal, the learned Chief Judge, Small Causes Court, Chennai.

2.The appellants are the claimants in M.C.O.P.No.3580 of 2013 on the file of the Motor Accident Claims Tribunal, the learned Chief Judge, Small Causes Court, Chennai. They filed the above said claim petition, claiming a sum of Rs.20,00,000/- as compensation for the death of one V.K.Gengan, who died in the accident that took place on 10.06.2013.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving by the driver of the auto rickshaw bearing Registration No.TN 05 J 8214 belonging to the first respondent and directed the second respondent-Insurance Company to pay a sum of Rs.11,19,000/- as compensation to the appellants at the first instance and recover the same from the owner of the vehicle, the first respondent herein, as the owner of the vehicle did not have valid driving license and valid permit to ply on the place of accident.

4.Not being satisfied with the amount awarded by the Tribunal, the appellants have come out with the present appeal seeking enhancement of compensation.

5.The learned counsel appearing for the appellants contended that the deceased was doing real estate business and was earning a sum of Rs.15,000/- per month at the time of accident. The Tribunal fixed a sum of Rs.6,500/- as monthly income of the deceased, which is meagre. The deceased was aged 38 years at the time of accident and the Tribunal has not granted any enhancement towards future prospects. The Tribunal failed to grant any amount towards loss of estate, loss of damage to clothes, loss of expectation of life and mental agony. The total compensation granted by the Tribunal under other heads are also meagre and prayed for enhancement of compensation.

6.Per contra, Mr.K.Poomalai, learned counsel appearing for the second respondent-Insurance Company contended that the appellants did not let in any material evidence to prove that the deceased was doing real estate business and was earning a sum of Rs.15,000/- per month at the time of accident. In the absence of any material evidence to substantiate their contention, the Tribunal rightly fixed a sum of Rs.6,500/- as monthly income, which is not meagre. The amounts awarded by the Tribunal under different heads are not meagre and prayed for dismissal of the appeal.

7.Heard the learned counsel appearing for the appellants as well as the second respondent-Insurance Company and perused the entire materials on record.

8. It is the contention of the appellants that the deceased was doing real estate business and was earning a sum of Rs.15,000/- per month at the time of accident. The appellants have not let in any material evidence to prove the avocation and income of the deceased. In the absence of material evidence, the Tribunal fixed a sum of Rs.6,500/- as monthly income of the deceased. The accident occurred in year 2013 and the monthly

income fixed by the Tribunal is meager. Hence, a sum of Rs.9,000/- is fixed as monthly income of the deceased. The deceased was aged 38 years at the time of accident and the Tribunal has erroneously awarded 30% towards future prospects. The appellants are entitled to only 25% enhancement towards future prospects. In view of the above, after deducting 1/3rd towards the personal expenses of the deceased, the compensation awarded by the Tribunal towards loss of income is modified to Rs.13,50,000/- {[Rs.9,000/- + Rs.2,250/-(25% of Rs.9,000)] X 12 X 15 X 2/3}. The Tribunal has awarded a sum of Rs.50,000/- towards consortium and a sum of Rs.25,000/- towards funeral expenses. The same are on the higher side and are hereby reduced to Rs.40,000/- towards consortium and Rs.15,000/- towards funeral expenses. The Tribunal has not granted any amount towards loss of estate. A sum of Rs.15,000/- is granted by this Court towards loss of estate. The amount awarded by the Tribunal towards loss of love and affection and transport expenses 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	10,14,000/-	13,50,000/-	Enhanced
2.	Consortium	50,000/-	40,000/-	Reduced
3.	Funeral expenses	25,000/-	15,000/-	Reduced
4.	Transportation	5,000/-	5,000/-	Confirmed
5.	Love & affection	25,000/-	25,000/-	Confirmed
6.	Loss of estate	-	15,000/-	Granted
	Total	Rs.11,19,000/-	Rs.14,50,000/-	enhanced by Rs.3,31,000/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.11,19,000/- is hereby enhanced to Rs.14,50,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellants are directed to pay the Court fee, if any on the enhanced amount of compensation. The second respondent-Insurance Company is directed to deposit the enhanced award amount now determined by this Court at the first instance and recover the same from the first respondent, 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 first appellant is permitted to withdraw her share of the enhanced award amount now determined by this Court, as per the ratio of apportionment fixed by the Tribunal, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. The share of the minor second appellant is directed to be deposited in any one of the Nationalized Bank, till the minor second appellant attains majority. On such deposit, the first appellant, being the mother of the minor second appellant is permitted to withdraw the accrued interest, once in three months for the welfare of the minor second appellant. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The Chief Judge,
Motor Accident Claims Tribunal,
Small Causes Court,
Chennai.

2.The Section Officer,
VR Section,
High Court,
Madras.

+1 CC to M/s.M. Malar, Advocate sr 105765
+1 CC to Mr.K.Poomalai, Advocate sr 105692.

C.M.A.No.1176 of 2016

VBA(CO)
SP(03/11/2020)

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