



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2381 of 2015

- 1.K.Padmini
- 2.Minor.K.Sowmiya
- 3.Minor.K.Varsha Roobini @ Veena
- 4.K.Rajakantham .. Appellants/ Petitioners

(Minors 2 and 3 rep. by her mother  
and natural guardian 1<sup>st</sup> appellant)

Vs.

- 1.P.Vijaya Sarathi
- 2.Iffco Tokio General Insurance Company Limited,  
N.No.28, O.No.195, II<sup>nd</sup> Floor,  
North Usman Road,  
Chennai - 600 017. .. Respondents/ Respondents

(1<sup>st</sup> respondent set ex-parte before the Tribunal,  
hence notice may be dispensed)

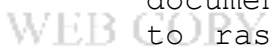
Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 16.02.2015 made in M.C.O.P.No.1034 of 2013 on the file of Motor Accidents Claims Tribunal, III Additional District Court, Poonamallee, Thiruvallur.

For Appellant : Mr.M.Sivakumar  
For R2 : Mrs.K.Saraswathi for  
Mr.C.R.Krishnamoorthy

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation of the award dated 16.02.2015 made in M.C.O.P.No.1034 of 2013 on the file of Motor Accidents Claims Tribunal, III Additional District Court, Poonamallee, Thiruvallur.

2.The appellants are the claimants in M.C.O.P.No.1034 of 2013 on the file of Motor Accidents Claims Tribunal, III Additional District Court, Poonamallee, Thiruvallur. They filed the above said claim petition, claiming a sum of Rs.10,03,000/-



3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver-cum-owner of the car, the first respondent herein and directed the second respondent-Insurance Company to pay a sum of Rs.6,03,300/- as compensation to the appellants.

5. The learned counsel for the appellants contended that the deceased was an agriculturist and doing milk vending business and was earning a sum of Rs.15,000/- per month. The Tribunal fixed a sum of Rs.4,500/- as monthly income of the deceased, which is meagre. The deceased was aged 59 years at the time of accident and the Tribunal has not granted any enhancement towards future prospects. The Tribunal erroneously applied multiplier the '8' and the correct multiplier applicable is '9'. The Tribunal ought to have deducted 1/4th towards personal expenses, instead of deducting 1/3rd. The amounts awarded by the Tribunal under other heads are meagre and prayed for enhancement of compensation.

7. I have heard the learned counsel for the appellants as well as the second respondent and perused the entire materials on record.

8. From the materials available on record, it is seen that the appellants have contended that the deceased was an agriculturist and was doing milk vending business and was earning a sum of Rs.15,000/- per month. In the absence of material evidence, the Tribunal fixed a sum of Rs.4,500/- as monthly income. The accident occurred in the year 2013 and the monthly income fixed by the Tribunal is meager. A sum of Rs.8,000/- is fixed by this Court as monthly income of the



deceased. The deceased was aged 59 years at the time of accident and the Tribunal has not granted any enhancement towards future prospects. The appellants are entitled to 10% enhancement towards future prospects. The correct multiplier applicable is '9' and the Tribunal erroneously applied multiplier '8'. The Tribunal erroneously deducted 1/3<sup>rd</sup> towards personal expenses, which is not proper. The claimants are four in number and hence, the Tribunal ought to have deducted 1/4<sup>th</sup> towards personal expenses. In view of the above, the compensation awarded by the Tribunal towards loss of income is modified to Rs.7,12,800/- [Rs.8,000/- + Rs.800/- (10% of Rs.8,000/-) X 12 X 9 X 3/4]. A sum of Rs.1,00,000/- awarded by the Tribunal towards loss of love and affection to the minor appellants 2 and 3 is confirmed. The Tribunal has awarded a sum of Rs.50,000/- towards loss of love and affection to the fourth appellant is hereby confirmed. The Tribunal has awarded a sum of Rs.1,00,000/- towards mental agony to the appellants, which is liable to be set aside and is hereby set aside. The Tribunal has not granted any amount towards loss of consortium to the first appellant and loss of estate to the appellants. A sum of Rs.40,000/- is granted by this Court towards loss of consortium and a sum of Rs.15,000/- towards loss of estate is granted by this Court. The amounts awarded by the Tribunal towards funeral expenses and medical 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                                      | 2,88,000/-                      | 7,12,800/-                        | enhanced                               |
| 2.    | Loss of mental agony                                | 1,00,000/-                      | -                                 | set aside                              |
| 3.    | Funeral expenses                                    | 15,000/-                        | 15,000/-                          | confirmed                              |
| 4.    | Loss of love and affection to the appellants 2 to 4 | 1,50,000/-                      | 1,50,000/-                        | confirmed                              |
| 5.    | Medical expenses                                    | 50,300/-                        | 50,300/-                          | confirmed                              |
| 6.    | Loss of consortium                                  | -                               | 40,000/-                          | granted                                |
| 7.    | Loss of estate                                      | -                               | 15,000/-                          | granted                                |
|       | Total                                               | Rs.6,03,300/-                   | Rs.9,83,100/-                     | enhanced by Rs.3,79,800/-              |



9. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.6,03,300/- is hereby enhanced to Rs.9,83,100/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The second respondent-Insurance Company is directed to deposit the enhanced award amount now determined by this Court, together 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 appellants 1 and 4 are permitted to withdraw their respective 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 appellants 2 and 3 are directed to be deposited in any one of the Nationalized Banks, till the minor appellants 2 and 3 attain majority. On such deposit, the first appellant, being the mother of the minor appellants 2 and 3 is permitted to withdraw the accrued interest, once in three months, for the welfare of the minor appellants 2 and 3. The appellants are directed to pay the Court fee, if any for the enhanced award amount. No costs.

Sd/-  
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

krk  
To

1. The III Additional District Judge,  
Motor Accidents Claims Tribunal,  
Poonamallee,  
Thiruvallur.

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

+lcc to Mr.C.R.Krishnamoorthy , Advocate SR.No. 40358

+lcc to Mr.C.Prabakaran , Advocate SR.No. 40575

C.M.A.No.2381 of 2015

A.SK(05/12/2019)