

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No. 1761 of 2016

1.G. Sathya
2.Minor Udaya
3.Minor Umamaheswari ... Appellants
(minor appellants 2 and 3 rep. by their
mother and natural guardian, 1st appellant)

Vs.

1.E. Srinivasan
2.IFFCO Tokyo General Insurance Co. Ltd.,
No. 195, North Usman Road,
T. Nagar,
Chennai 600 017. ... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 08.11.2012, made in M.C.O.P.No. 235 of 2011, on the file of the III Additional District Sessions Judge, (Motor Accident Claims Tribunal), Tiruvallur at Poonamallee.

For Appellants : Mr. K. Suryanarayanan

For Respondents: Mr. S.N. Subramani (for R1)
Mr. J. Michael Visuvasam (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 08.11.2012, made in M.C.O.P.No. 235 of 2011, on the file of the III Additional District Court, (Motor Accident Claims Tribunal), Tiruvallur at Poonamallee.

2.The appellants are the claimants in M.C.O.P.No. 235 of 2011, on the file of the III Additional District Court, (Motor Accident Claims Tribunal), Tiruvallur at Poonamallee. They filed the said claim petition, claiming a sum of Rs.10,00,000/- as

compensation for the death of one Ganesan, who died in the accident that took place on 27.01.2011.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the 1st respondent, rider-cum-owner of the Motorcycle and directed the 2nd respondent as insurer of the vehicle to pay a sum of Rs.5,80,000/- as compensation to the appellants.

4.Not being satisfied with the amounts awarded by the Tribunal in the award dated 08.11.2012, made in M.C.O.P.No. 235 of 2011, the appellants have come out with the present appeal.

5.Learned counsel appearing for the appellants contended that the deceased was working as Mason and earning a sum of Rs.500/- per day. The Tribunal fixed a meagre sum of Rs.4,500/- per month as the income of the deceased. At the time of accident, the deceased was aged 40 years. The Tribunal has not granted any enhancement towards future prospects. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of the compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal, in the absence of any material evidence to prove the avocation and income of the deceased, fixed a sum of Rs.4,500/- per month as notional income. The same is not meagre. The amounts awarded by the Tribunal under different heads are not meagre. The appellants have not made out any case for enhancement of the compensation and prayed for dismissal 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 appellants contended that the deceased was working as Mason and earning a sum of Rs.500/- per day. In the absence of any evidence to prove the avocation and income of the deceased, the Tribunal has fixed the notional income at Rs.4,500/- per month. The same is meagre. The accident is of the year 2011. Considering the year of accident and the nature of work, the notional income of the deceased is fixed at Rs.9,000/- per month. The Tribunal having fixed the age of the deceased as 44 years as per Exs.P4 and P5 - Death Report and Post Mortem Certificate respectively, has not granted any enhancement towards future prospects. Considering the age of the deceased, the appellants are entitled to 25% enhancement towards future

prospects. The Tribunal has erroneously applied the multiplier '15' as against '14' for awarding compensation towards loss of dependency. There are 3 dependents of the deceased. Hence, deducting 1/3rd towards personal expenses of the deceased and applying the multiplier '14', the amount awarded by the Tribunal towards loss of dependency is modified to Rs.12,60,000/- {[Rs.9,000/- + Rs.2,250/- (25% of Rs.9,000/-)] x 12 x 14 x 2/3}. The amount awarded by the Tribunal towards loss of consortium to the 1st appellant, wife of the deceased and loss of love and affection to the appellants 2 and 3, children of the deceased are meagre. The 1st appellant, being wife of the deceased is entitled to a sum of Rs.40,000/- towards loss of consortium and the appellants 2 and 3, being children of the deceased are entitled to a sum of Rs.40,000/- towards loss of love and affection. The Tribunal has awarded a sum of Rs.10,000/- towards funeral expenses. The same is meagre. Hence, this Court awards a sum of Rs.15,000/- towards funeral expenses. The Tribunal has not awarded any amount towards loss of estate. The appellants are entitled to a sum of Rs.15,000/- towards loss of estate.

9.It is well settled that the Tribunal and the Courts have to award just compensation. Though the claimants have claimed lesser compensation, the Courts have power to grant just compensation more than the amount claimed by the claimants. 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 dependency	5,40,000/-	12,60,000/-	Enhanced
2.	Loss of consortium to the 1 st appellant	10,000/-	40,000/-	Enhanced
3.	Loss of love and affection to the appellants 2 and 3	20,000/-	40,000/-	Enhanced
4.	Funeral expenses	10,000/-	15,000/-	Enhanced
5.	Loss of estate	-	15,000/-	Granted

Total	5,80,000/-	13,70,000/-	Enhanced by - Rs.7,90,000/-
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10. In the result, the appeal is allowed and the amount awarded by the Tribunal at Rs.5,80,000/- is enhanced to Rs.13,70,000/- 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 six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No. 235 of 2011. On such deposit, the 1st appellant/ 1st claimant 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 appellants 2 and 3 are directed to be deposited in any one of the Nationalized Bank, till the minors attain majority. The 1st appellant, 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, on the enhanced amount of Rs.7,90,000/-. It is made clear that the appellants are not entitled for any interest for the delay period on the amount of Rs.7,90,000/-, enhanced by this Court as per the order of this Court dated 01.08.2016, made in M.P. No. 1 of 2014 in C.M.A. SR. No. 69333 of 2014. No costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1.The III Additional District Judge,
(Motor Accident Claims Tribunal),
Tiruvallur at Poonamallee.

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

+1cc to Mr.K.Suryanarayanan, Advocate Sr.104742

+1cc to Mr.J.Michael Visuvasam, Advocate Sr.104956

C.M.A.No. 1761 of 2016

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srg 09/11/2020