

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.67 of 2015

1.G.Thangapandiyan  
2.P.Vasuki  
3.Dilli Rekha @ Lavanya  
4.Suganya @ Akalya .. Appellants/Petitioners

Vs.

1.Akber Sheriff  
2.United India Insurance Company Limited  
No.38, Annasalai, Chennai-2. ... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 19.03.2010 made in M.C.O.P.No.1853 of 2005 on the file of Motor Accident Claims Tribunal, Chief Small Causes Court, Chennai.

For Appellants : Mr.Varadhakamaraj

For R2 : Mr.M.J.Vijayaraghavan

J U D G M E N T

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 19.03.2010 made in M.C.O.P.No.1853 of 2005 on the file of Motor Accident Claims Tribunal, Chief Small Causes Court, Chennai.

2.The appellants are claimants in M.C.O.P.No.1853 of 2005 on the file of Motor Accident Claims Tribunal, Chief Small Causes Court, Chennai. The appellants filed the said claim petition claiming a sum of Rs.4,00,000/- as compensation for the death of one Praveen Kumar, who died in the accident that took place on 16.08.2004.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to

rash and negligent driving by the driver of the Tata Sumo car belonging to the 1<sup>st</sup> respondent and directed the 2<sup>nd</sup> respondent/Insurance Company being insurer of the said vehicle to pay a sum of Rs.2,65,000/- as compensation to the appellants.

4. Not being satisfied with the amounts 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 working as a computer programmer in a private company and was earning a sum of Rs.4,500/- per month. A sum of Rs.3,500/- fixed by the Tribunal as notional monthly income of the deceased is meagre. Further, the Tribunal erred in deducting 50% towards personal expenses. The Tribunal has not awarded any enhancement towards future prospects. The deceased was aged 19 years. The correct multiplier is 18. The Tribunal erred in applying multiplier 14 based on the age of the mother of the deceased. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6. Per contra, the learned counsel appearing for the 2<sup>nd</sup> respondent/Insurance Company contended that the appellants claimed a sum of Rs.4,00,000/- as compensation and the Tribunal has awarded a sum of Rs.2,65,000/- as compensation to the appellants. In this appeal, the appellants have restricted their claim only Rs.1,35,000/-. Though the appellants have stated that the deceased was working as a computer programmer in a private company, they have not filed any document to prove the avocation and income of the deceased. The name of the private company in which the deceased was working is also not mentioned. The appellants have not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

7. Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the 2<sup>nd</sup> respondent/Insurance Company and perused all the materials available on record.

8. From the materials available on record, it is seen that the appellants have contended that the deceased was working as a computer programmer in a private company and was earning a sum of Rs.4,500/- per month. But the appellants have not filed any document to prove the avocation and income of the deceased. The accident has occurred in the year 2004. Therefore, a sum of Rs.3,500/- per month fixed by the Tribunal towards notional income of the deceased is proper and is not interfered with. The deceased was aged 19 years at the time of accident as per

Ex.P7/birth certificate. The Tribunal has not granted any enhancement towards future prospects. The appellants are entitled to 40% enhancement towards future prospects. The Tribunal has applied multiplier 14 considering the age of the mother of the deceased and the same is erroneous. As per the judgment of the Hon'ble Apex Court reported in 2017 (2) TNMAC 609 (SC) (National Insurance Company v. Pranay Sethi), the Tribunal ought to have considered the age of the deceased for applying multiplier. Therefore, the correct multiplier is 18. The Tribunal has deducted 50% towards personal expenses as the deceased was a bachelor. The same is proper. Thus, the amount awarded by the Tribunal towards loss of pecuniary benefits is modified to Rs.5,29,200/- (Rs.3,500/- + 1400 [Rs.3,500/- x 40%] x 12 x 18 x 1/2). The Tribunal has granted a sum of Rs.10,000/- towards loss of love and affection. The deceased was aged 19 years at the time of accident. The appellants are parents and sisters of the deceased. They have lost the deceased at his tender age. Hence, the amount granted by the Tribunal towards loss of love and affection is enhanced to Rs.40,000/-. A sum of Rs.3,000/- granted by the Tribunal towards funeral expenses and transportation is meagre and the same is hereby enhanced to Rs.15,000/- towards funeral expenses and Rs.5,000/- towards transportation. The Tribunal has not awarded any amount towards loss of estate and this Court awards 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 or reduced |
|------|----------------------------|------------------------------------------------------|-----------------------------------|---------------------------------------------------|
| 1.   | Loss of pecuniary benefits | 2,52,000                                             | 5,29,200                          | Enhanced                                          |
| 2.   | Loss of love and affection | 10,000                                               | 40,000                            | Enhanced                                          |
| 3.   | Funeral expenses           | (For both funeral expenses and transportation) 3,000 | 15,000                            | Enhanced                                          |

|    |                |               |               |                           |
|----|----------------|---------------|---------------|---------------------------|
| 4. | Transportation | -             | 5,000         | Granted                   |
| 5. | Loss of estate | -             | 15,000        | Granted                   |
|    | Total          | Rs.2,65,000/- | Rs.6,04,200/- | Enhanced by Rs.3,39,200/- |

10. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.2,65,000/- is hereby enhanced to Rs.6,04,200/- 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 being father of the deceased is entitled to a sum of Rs.1,54,800/-, 2<sup>nd</sup> appellant being mother of the deceased is entitled to a sum of Rs.1,79,800/- and the appellants 3 & 4 being sisters of the deceased are entitled to a sum of Rs.1,34,800/- each as compensation along with proportion. It is made clear that the appellants/claimants shall not be entitled for any interest for the delay period on the amount of Rs.3,39,200/- enhanced by this Court as per the order of this Court dated 30.10.2014 made in M.P.No.1 of 2012 in C.M.A.SR.No.36887 of 2012. The 2<sup>nd</sup> respondent/Insurance Company is directed to deposit the enhanced 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 appellants/claimants are permitted to withdraw their respective share of the award amount along with proportionate interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-

Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

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To

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

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

+1cc to Mr.K.Varadhakamaraj , Advocate SR.No.100622

C.M.A.No.67 of 2015

PP (CO)  
GMY (25/09/2020)



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