



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.89 of 2015

1.C.Durairaj
2.D.Lakshmi
3.Minor D.Lalitha
(Rep. by her father and next friend
1st appellant) .. Appellants/Petitioners

Vs.

1.Ren Johnson

2.ICICI Lombard General Insurance Co.Ltd.
C/o.Motor III party claims office
Arihant plaza 1st floor, No.84 and 85
Walltax road, Chennai-3. .. Respondents/Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 28.08.2014 made in M.C.O.P.No.1569 of 2012 on the file of Motor Accident Claims Tribunal, Chief Small Causes Court, Chennai.

For Appellants : Mr.T.G.Balachandran

R1 : Notice dispensed with
For R2 : Mrs.R.Sreevidhya

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 28.08.2014 made in M.C.O.P.No.1569 of 2012 on the file of Motor Accident Claims Tribunal, Chief Small Causes Court, Chennai.

2.The appellants are claimants in M.C.O.P.No.1569 of 2012 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.20,00,000/- as compensation for the death of one Ambika, who died in the accident that took place on 25.02.2012. 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 of the



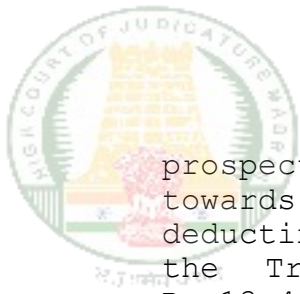
motor cycle and directed both the 1st respondent as well as 2nd respondent/Insurance Company being insurer of the said motor cycle to jointly and severally pay a sum of Rs.6,23,880/- as compensation to the appellants. Not being satisfied with the amount awarded by the Tribunal, the appellants have come out with the present appeal seeking enhancement of compensation.

3.The learned counsel appearing for the appellants contended that the deceased was working as a house keeping staff in M/s.Updater Services (P) Ltd. and was earning a sum of Rs.7,431/- per month, including other allowances and leave wages. To prove the same, the appellants have examined Senior Executive of the company as P.W.3. The Tribunal without considering the same, erred in fixing only a sum of Rs.4,210/- per month as notional income of the deceased. The deceased has not completed 35 years and the Tribunal ought to have applied multiplier 17. The Tribunal has not awarded any enhancement towards future prospects. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

4.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the Tribunal has rightly fixed age of the deceased as 35 years at the time of accident based on Ex.P3/post-mortem certificate and Ex.P4/death certificate and applied multiplier 16. The Tribunal considering all the materials in proper perspective, has awarded compensation, which is not meagre. The appellants have not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

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

6.From the materials available on record, it is seen that the appellants have contended that the deceased was working as a house keeping staff in M/s.Updater Services (P) Ltd. and was earning a sum of Rs.7,431/- per month. To prove the avocation and income of the deceased, they have produced Ex.P7/copy of wage register and Ex.P8/copy of attendance register. The Tribunal has taken only basic wages and Dearness Allowance and fixed a sum of Rs.4,210/- per month as notional income of the deceased, which is erroneous. This Court considering the documents marked by the appellants, fixes a sum of Rs.7,500/- per month as notional income of the deceased. The deceased was aged 35 years at the time of accident and the same was evidenced by Ex.P3/post-mortem certificate and Ex.P4/death certificate. The Tribunal has not granted any enhancement towards future



prospects. The appellants are entitled to 40% enhancement towards future prospects. By applying multiplier 16 and deducting 1/3rd towards personal expenses, the amount awarded by the Tribunal towards loss of dependency is modified to Rs.13,44,000/- (Rs.7,500/- + 3000 [Rs.7,500/- x 40%] x 12 x 16 x 2/3). The Tribunal has granted a sum of Rs.25,000/- towards loss of consortium, which is meagre and the same is hereby enhanced to Rs.40,000/-. A sum of Rs.25,000/- granted by the Tribunal towards funeral expenses is excessive and the same is hereby reduced to Rs.15,000/-. No amount was granted by the Tribunal towards loss of estate and this Court awards a sum of Rs.15,000/- towards loss of estate. The amounts awarded by the Tribunal under other heads are just and reasonable and the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S.N o	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Loss of dependency	5,38,880	13,44,000	Enhanced
2.	Loss of consortium	25,000	40,000	Enhanced
3.	Loss of love and affection	30,000	30,000	Confirmed
4.	Funeral expenses	25,000	15,000	Reduced
5.	Transportation	5,000	5,000	Confirmed
6.	Loss of estate	-	15,000	Granted
	Total	Rs.6,23,880/-	Rs.14,49,000/-	Enhanced by Rs.8,25,120/-

7. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.6,23,880/- is hereby enhanced to Rs.14,49,000/- 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 1st appellant being husband of the deceased is



entitled to a sum of Rs.4,98,920/- and the appellants 2 and 3 being daughters of the deceased are entitled to a sum of Rs.4,75,040/- each as compensation. Both the 1st respondent as well as 2nd respondent/Insurance Company are directed to deposit the enhanced award amount now determined by this Court along with interest and costs, jointly and severally, 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 2/claimants 1 and 2 are permitted to withdraw their respective share of the award amount along with proportionate interest and costs, less the amount if any, already withdrawn. The share of the minor 3rd appellant is directed to be deposited in any one of the Nationalised Banks till the minor attains majority. The 1st appellant being the father of the 3rd appellant is permitted to withdraw the accrued interest once in three months for the welfare of the minor. No costs.

Sd/-
Assistant Registrar(CS-IX)

//True copy//

Sub Assistant Registrar

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To

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

Copy To

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

+1cc to Mr.T.G.Balachandran, Advocate SR.No.100686

+1cc to Mrs.R.Sreevidhya, Advocate SR.No.101758

C.M.A.No.89 of 2015

RP(CO)
GMY(18/08/2021)