

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.03.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.92 of 2015

1.Jayalakshmi
2.Kuppammal
3.Suganthi

.. Appellants

Vs.

1.R.Manikandan
2.The Divisional Manager,
Oriental Insurance Co. Ltd.,
II Floor, S.V.Complex,
No.179, Eswaran Koil Street,
Puducherry 605 001.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 16.04.2012, made in M.C.O.P.No.353 of 2011, on the file of the Principal District Court, (Motor Accident Claims Tribunal), Puducherry.

For Appellants : Mr.K.Sasindran

For R2 : Mr.D.Bhaskaran

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellants-claimants, challenging the award dated 16.04.2012, made in

M.C.O.P.No.353 of 2011, on the file of the Principal District Court, (Motor Accident Claims Tribunal), Puducherry.

2.The appellants-claimants filed M.C.O.P.No.353 of 2011, on the file of the Principal District Court, (Motor Accident Claims Tribunal), Puducherry, claiming a sum of Rs.15,00,000/- as compensation for the death of one Subramanian, who died in the accident that took place on 06.03.2011.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the rider of the motorcycle belonging to the 1st respondent and directed the 1st respondent to pay a sum of Rs.2,25,000/- as compensation to the appellants and dismissed the claim petition as against the 2nd respondent.

4.Challenging the portion of the award dismissing the claim petition against the 2nd respondent and for enhancement of compensation granted by the Tribunal in the award dated 16.04.2012, made in M.C.O.P.No.353 of 2011, the appellants have come out with the present Civil Miscellaneous Appeal.

5.The learned counsel appearing for the appellants contended that the Tribunal erroneously held that the 1st respondent, owner of the motorcycle is liable to pay compensation. The deceased was a mason and was earning a sum of Rs.450/- per day and the Tribunal erroneously fixed a meagre sum of Rs.4,500/- per month as notional income of the deceased and applied the multiplier '5', which is not correct. The total compensation awarded by the Tribunal is meagre and prayed for setting aside the portion of the award dismissing the claim petition against the 2nd respondent and prayed for enhancement of the compensation.

6.Per contra, Mr.D.Bhaskaran, learned counsel appearing for the 2nd respondent-Insurance Company contended that the rider of the motorcycle was having only learner's license and has violated the rules. At the time of accident the driver was not accompanied by the instructor and violated the rules. In view of the violation of rules, the Tribunal has dismissed the claim petition against the 2nd respondent. The respondents have failed to prove the avocation and income of the deceased. In the absence of material evidence, the notional income fixed by the Tribunal is not meagre. The Tribunal considering the

materials on record, fixed the age, applied multiplier and awarded compensation. The total compensation awarded by the Tribunal is not meagre and prayed for dismissal of the appeal.

7. Heard the 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, the appellants have contended that the accident has occurred due to rash and negligent riding by the rider of the motorcycle. The Tribunal considering the materials on record, held that the accident has occurred due to rash and negligent riding by the rider of the motorcycle. The Tribunal on two technical grounds has dismissed the claim petition against the 2nd respondent. It is now well settled that learner's driving license is also a valid driving license. The provisions of Motor Vehicles Act are beneficial legislation. The claimants must be in a position to realize the compensation awarded and award of the Tribunal should not merely be a paper award. For the above reasons, the award of the Tribunal dismissing the claim petition against the 2nd respondent is set aside and this Court holds that the 2nd respondent-Insurance Company is liable to

pay compensation to the appellants as insurer of the vehicle belonging to the 1st respondent. The 2nd respondent is directed to pay the compensation awarded to the appellants.

9.As far as the quantum of compensation is concerned, the appellants have contended that the deceased was a mason and was earning a sum of Rs.450/- per day. They have not substantiated the said stand. The Tribunal in the absence of material, fixed a sum of Rs.4,500/- per month as the notional income of the deceased. The accident is of the year 2011. The notional income fixed by the Tribunal is meagre. A sum of Rs.6,500/- per month is fixed as notional income of the deceased. As per the post-mortem report, the deceased was aged 60 years at the time of accident. The Tribunal relying on the post-mortem report for fixing the age, erroneously fixed the age of the deceased between 60 to 65 and applied the multiplier '5'. The age of the deceased is fixed at 60 years as per the post-mortem report. The correct multiplier applicable is '9'. The compensation awarded by the Tribunal towards loss of dependency is modified to Rs.4,68,000/- [Rs.6,500/- x 12 x 9 x 2/3]. The amounts granted by the Tribunal for loss of consortium, funeral expenses and loss of estate are meagre and

the same are enhanced to Rs.40,000/-, Rs.15,000/- and Rs.15,000/- respectively. The amount granted by the Tribunal towards loss of love and affection is just and reasonable and the same is 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 Dependency	1,80,000/-	4,68,000/-	enhanced
2.	Loss of love and affection	20,000/-	20,000/-	confirmed
3.	Loss of consortium	10,000/-	40,000/-	Enhanced
4.	Loss of estate	7,500/-	15,000/-	Enhanced
5.	Funeral expenses	7,500/-	15,000/-	enhanced
	Total	2,25,000/-	5,58,000/-	Enhanced by Rs.3,33,000/-

10. In the result, this Civil Miscellaneous Appeal is allowed and the award of the Tribunal is hereby modified setting aside the portion of award dismissing the claim petition against the 2nd respondent and the award granted by the Tribunal at Rs.2,25,000/- is enhanced to Rs.5,58,000/- along with interest and costs. The 2nd respondent is directed to deposit the enhanced award amount 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.353 of 2011. On such deposit, the appellants/claimants are permitted to withdraw their share of the enhanced award amount along with interest and costs, as per the ratio of apportionment fixed by the Tribunal, less the amount already withdrawn if any, by filing necessary application before the Tribunal. The appellants are directed to pay the necessary Court fee, if any, for the enhanced award amount now determined by this Court. No costs.

29.03.2019

Index : Yes
Speaking Order : Yes

gsa

To

1.The Principal District Judge,
(Motor Accident Claims Tribunal),
Puducherry.

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

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V.M.VELUMANI, J.,

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