

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.03.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.952 of 2015

1.Bhuvaneswari

2.Kothai Ammal

3.G.Ragavi (Minor)

4.G.Vignesh (Minor) ... Appellants/Petitioners
(Minor appellants are rep. by their mother and
natural guardian the 1st appellant)

Vs.

1.B.Kaluram (1st Respondent Set Exparte in MCOP)

2.National Insurance Co. Ltd.,
No.135, North Usman Road, T.Nagar, Chennai - 106.
... Respondents/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 15.03.2011 made in M.C.O.P.No.169 of 2007 on the file of the Motor Accident Claims Tribunal, Chief Court of Small Causes at Chennai.

For Appellants : Mr.A.A.Venkatesan

For R2 : Mr.J.Chandran

J U D G M E N T

The Civil Miscellaneous Appeal is filed by the appellants/claimants seeking enhancement of compensation granted by the Tribunal in the award dated 15.03.2011 made in M.C.O.P.No.169 of 2007 on the file of the Motor Accident Claims Tribunal, Chief Court of Small Causes at Chennai.

2.The appellants are claimants in M.C.O.P.No.169 of 2007 on the file of the Motor Accident Claims Tribunal, Chief Court of Small Causes at Chennai. They filed the said claim petition

claiming a sum of Rs.25,00,000/- as compensation for the death of one Gnanasekar, who died in the accident that took place on 14.10.2006. 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 load auto belonging to the 1st respondent and directed the 2nd respondent/Insurance Company to pay a sum of Rs.7,05,000/- 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/claimants contended that the deceased was working as a Manager in Vinoth bricks works and Vinoth Construction Company and was earning a sum of Rs.20,000/- per month. The Tribunal erroneously fixed meagre sum of Rs.5,000/- per month as notional income of the deceased. The deceased was aged 38 years at the time of the accident. The Tribunal has not granted any enhancement towards future prospects. The amounts granted by the Tribunal towards loss of love & affection, loss of consortium and funeral expenses are meagre. The Tribunal has not awarded any amount towards loss of estate and prayed for enhancement of compensation.

4.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the appellants have not proved the age, avocation and income of the deceased. In the absence of any material evidence, the Tribunal has fixed a sum of Rs.5,000/- per month as notional income of the deceased and the same is not meagre. The amounts awarded by the Tribunal are just compensation. 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 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 Manager in Vinoth bricks works and Vinoth Construction Company and was earning a sum of Rs.20,000/- per month. The appellants have filed Ex.P8/salary certificate to prove the same. The Tribunal rejected the same on the ground that the author of the document was not examined. In the absence of any materials, the Tribunal has fixed a sum of Rs.5,000/- per month as notional income of the deceased. The accident is of the year 2006. 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. The deceased was aged 38 years at the time of the accident. The appellants are entitled to 40% enhancement towards future prospects. The amount granted by the Tribunal towards

pecuniary loss is modified to Rs.12,28,500/- (Rs.6,500/- + 2600 (Rs.6,500/- X 40%) x 12 x 15 x 3/4). A sum of Rs.10,000/- each granted by the Tribunal towards loss of consortium and funeral expenses & transportation are meagre. The 1st appellant is entitled to a sum of Rs.40,000/- towards loss of consortium. A sum of Rs.15,000/- is granted towards funeral expenses and a sum of Rs.5,000/- is granted separately towards transportation. The Tribunal has not awarded any amount towards loss of estate. A sum of Rs.15,000/- is granted towards loss of estate. The amount granted by the Tribunal towards loss of love and affection to the appellants 2 to 4 is just and reasonable and the same is hereby 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.	Pecuniary loss	6,75,000	12,28,500	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 to 4	10,000	10,000	Confirmed
4.	Funeral expenses	10,000	15,000	Enhanced
5.	Transportation charges	-	5,000	Granted
6.	Loss of estate	-	15,000	Granted
	Total	Rs.7,05,000/-	Rs.13,13,500/-	Enhanced by Rs.6,08,500/-

7. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.7,05,000/- is hereby enhanced to Rs.13,13,500/- 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 wife of the deceased is

entitled to a sum of Rs.4,52,250/-, 2nd appellant being mother of the deceased is entitled to a sum of Rs.2,37,000/- and the appellants 3 and 4 being daughter and son of the deceased are entitled to a sum of Rs.3,12,125/- each as compensation. The 2nd respondent/Insurance Company is directed to deposit the 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 1 & 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 appellants 3 & 4 is directed to be deposited in any one of the Nationalised Bank till the minors attain majority. The 1st appellant being the mother of the appellants 3 & 4 is permitted to withdraw the accrued interest once in three months for the welfare of the minors. No costs.

Sd/-
Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

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To
The Chief Judge,
Court of Small Causes,
Motor Accidents Claims Tribunal,
Chennai.

+1cc to Mr.A.A.Venkatesan, Advocate SR.No.29602

+1cc to Mr.J.Chandran, Advocate SR.No.30912

C.M.A.No.952 of 2015

RSI (CO)
GMY (09/10/2019)

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