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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1430 of 2018

1.S.Madhidevi @ Devi

2.S.Suriya

3.Minor S.Prakash

(Minor rep. By his mother

Next Friend, S.Madhidevi)

.. Appellants

Vs.

1. K.Venkatesan

2. ICICI Lombard Motor Insurance Co. Ltd.,

Motor Third Party Cell,

No.140, Nungambakkam High Road,

Chennai 34.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 10.01.2018, made in M.C.O.P.No.2243 of 2014, on the file of the Chief Small Causes Court, (Motor Accident Claims Tribunal), Chennai.

For Appellants : Mr.K.Varadha Kamaraj

For R2 : Ms.R.Sreevidhya

R1- Not Ready in Notice

#### J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellants-claimants, seeking enhancement of the compensation granted by the award dated 10.01.2018, made in M.C.O.P.No.2243 of 2014, on the file of the Chief Small Causes Court, (Motor Accident Claims Tribunal), Chennai.

2.The appellants-claimants filed M.C.O.P.No.2243 of 2014, on the file of the Chief Small Causes Court, (Motor Accident Claims Tribunal), Chennai, claiming a sum of Rs.20,00,000/- as compensation for the death of one Sekar, who died in the accident that took place on 08.07.2010.



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 1<sup>st</sup> respondent and directed the 2<sup>nd</sup> respondent-Insurance Company to pay a sum of Rs.7,47,688/- as compensation to the appellants.

4.Not being satisfied with the amounts granted by the Tribunal in the award dated 10.01.2018, made in M.C.O.P.No.2243 of 2014, the appellants have come out with the present appeal.

5.The learned counsel appearing for the appellants contended that the deceased was aged 46 years at the time of accident and was doing centering work and earning a sum of Rs.600/- per day. The Tribunal failed to consider the evidence of employer P.W.3 and erred in fixing a meagre sum of Rs.7,000/- as the notional income of the deceased. The Tribunal erred in not awarding any amount towards loss of love and affection. In any event, the total compensation granted by the Tribunal is meagre and prayed for enhancement of the same.

6.Per contra, the learned counsel appearing for the 2<sup>nd</sup> respondent-Insurance Company contended that the Tribunal considering all the materials on record in proper perspective, granted compensation which 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 the learned counsel appearing for the appellants as well as the 2<sup>nd</sup> respondent and perused the materials available on record.

8.From the materials on record, it is seen that the appellants have contended that the deceased was doing Centering work and was earning a sum of Rs.600/- per day. The appellants have also examined the employer of the deceased as P.W.3 to prove the same. The Tribunal without considering the same, erroneously fixed a meagre sum of Rs.7,000/- as the notional income of the deceased. The accident is of the year 2010. Hence, the notional income of the deceased is fixed at Rs.8,500/- per month. The deceased was aged 46 years at the time of accident. The Tribunal failed to grant any enhancement towards future prospects. Hence, granting 10% towards future prospects of the deceased and after deducting 1/3<sup>rd</sup> towards the personal expenses of the deceased, the compensation granted by the Tribunal towards loss of income is modified to Rs.8,22,800/- {[Rs.8,500/- + Rs.850/- (10% of Rs.8,500/-)] x 12 x 11 x 2/3}. The Tribunal failed to grant any amount towards loss of love and affection. Hence, a sum of Rs.40,000/- each is granted towards loss of love and affection to the appellants 2 and 3. The amounts granted by



the Tribunal under other heads are just and reasonable and the same are 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 income             | 6,77,688/-                      | 8,22,800/-                        | Enhanced                               |
| 2.   | Loss of consortium         | 40,000/-                        | 40,000/-                          | Confirmed                              |
| 3.   | Loss of love and affection | -                               | 80,000/-                          | Granted                                |
| 4.   | Funeral expenses           | 15,000/-                        | 15,000/-                          | Confirmed                              |
| 5.   | Loss of estate             | 15,000/-                        | 15,000/-                          | Confirmed                              |
|      | Total                      | 7,47,688/-                      | 9,72,800/-                        | Enhanced by Rs.2,25,112/-              |

9. In the result, the appeal is partly allowed and the compensation granted by the Tribunal at Rs.7,47,688/- is enhanced to Rs.9,72,800/- along with interest and costs. The 2<sup>nd</sup> respondent-Insurance Company 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.2243 of 2014. On such deposit, the appellants 1 and 2/claimants 1 and 2 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 shares of the minor 3<sup>rd</sup> appellant is directed to be deposited in any of the Nationalized Banks, till the minor attains majority. The 1<sup>st</sup> appellant/mother of the minor 3<sup>rd</sup> appellant is permitted to withdraw the accrued interest, once in three months for the welfare of the minor 3<sup>rd</sup> appellant. No costs. The appellants are directed to pay the necessary Court fee, if any for the amount now enhanced by this Court.

Sd/-  
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

gsa



To

1. The Chief Small Causes Judge,  
(Motor Accident Claims Tribunal),  
Chennai.

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

+lcc to Mr.K.Varadha Kamaraj, Advocate, S.R.No.42148

+lcc to Ms.R.Sreevidhya, Advocate, S.R.No.42794

C.M.A.No.1430 of 2018

NRL (CO)  
CS/15/10/2019