

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2136 of 2019

1.Kalaivani
2.Minor.Krishnaraj
3.Minor.Arunraj ... Appellants/Petitioners

(Minor appellants 2 and 3 are represented by their next friend,
Guardian and mother, Kalaivani, the first appellant herein)

Vs.

1.Srirangan
2.The Oriental Insurance Company Limited,
Divya Towers II Floor, 15-1, Fort Main Road,
Salem - 636 001. ... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 30.11.2018 made in M.C.O.P.No.1515 of 2017 on the file of the Motor Accident Claims Tribunal, Special District Court, Salem.

For Appellants : Mr.T.S.Arthanareeswaran
For R2 : Mr.J.Chandran

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award dated 30.11.2018 made in M.C.O.P.No.1515 of 2017 on the file of the Motor Accident Claims Tribunal, Special District Court, Salem.

2.The appellants are the claimants in M.C.O.P.No.1515 of 2017 on the file of the Motor Accident Claims Tribunal, Special District Court, Salem. They filed the above said claim petition, claiming a sum of Rs.25,00,000/- as compensation for the death of one Ayyappan, who died in the accident that took place on 23.05.2017.

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 first respondent and also fixed 15% negligence

on the part of the deceased. The Tribunal awarded a sum of Rs.14,74,000/- as compensation and directed the respondents jointly and severally to pay a sum of Rs.12,52,900/- i.e., 85% of the award amount as compensation to the appellants.

4. Not being satisfied with the amount awarded by the Tribunal, the appellants have come out with the present appeal.

5. Though the learned counsel appearing for the appellants raised various grounds with regard to contributory negligence and other grounds, at the time of hearing, the learned counsel for the appellants restricted his argument with regard to monthly income fixed and compensation granted towards loss of love and affection to the appellants 2 and 3 by the Tribunal are very meagre and prayed for enhancement of compensation by fixing monthly income at Rs.15,000/- per month.

6. The learned counsel appearing for the second respondent-Insurance Company contended that the appellants have not filed any material evidence to prove the monthly income of the deceased. In the absence of material evidence, the Tribunal has correctly fixed a sum of Rs.7,500/- as monthly income of the deceased and granted 40% enhancement towards future prospects and the same is not meagre and prayed for dismissal of the appeal.

7. I have heard the learned counsel for the appellants as well as the second respondent and perused the entire materials on record.

8. From the materials available on record, it is seen that the appellants have contended that deceased was a weaver working for wages and was getting a sum of Rs.18,000/- per month. The appellants failed to prove the said contention by filing documents. In the absence of material evidence, the Tribunal fixed a sum of Rs.7,500/- as monthly income of the deceased. The accident occurred in the year 2017 and the monthly income fixed by the Tribunal at Rs.7,500/- is meagre. Hence, a sum of Rs.10,000/- is fixed as monthly income of the deceased. Applying the multiplier '16' and after deducting $\frac{1}{3}$ towards personal expenses, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.17,92,000/- [$\text{Rs.10,000/-} + 40\% \text{ of Rs.10,000/-} \times 12 \times 16 \times \frac{2}{3}$]. The Tribunal has awarded a sum of Rs.20,000/- towards loss of love and affection to the first appellant in addition to granting a sum of Rs.40,000/- towards loss of consortium. The first appellant, being the wife of the deceased is entitled to only compensation towards loss of consortium and not for loss of love and affection. Therefore, a sum of Rs.20,000/- granted by the Tribunal towards loss of love and affection to the first appellant is liable to be set aside.

and is hereby set aside. The appellants 2 and 3 are aged 14 and 13 years respectively. The Tribunal has awarded a sum of Rs.20,000/- each to the minor appellants 2 and 3 towards loss of love and affection, which is meagre and the same is hereby enhanced to Rs.40,000/- each. The amount awarded by the Tribunal under other heads are confirmed. From the award of the Tribunal it is seen that the Tribunal has fixed 15% contributory negligence on the part of the deceased on the ground that the deceased did not wear helmet at the time of accident. Hence, 15% contributory negligence fixed by the Tribunal on the part of the deceased is in order and the same is not interfered with. 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	13,44,000/-	17,92,000/-	Enhanced
2.	Loss of consortium	40,000/-	40,000/-	Confirmed
3.	Loss of love and affection to the first appellant	20,000/-	-	Set aside
4.	Loss of love and affection to the appellants 2 and 3	40,000/-	80,000/-	Enhanced
5.	Funeral expenses	15,000/-	15,000/-	Confirmed
6.	Loss of estate	15,000/-	15,000/-	Confirmed
	Total	Rs.14,74,000/- 85% of the amount comes to Rs.12,52,900/-	Rs.19,42,000/- 85% of the amount comes to Rs.16,50,700/-	enhanced by Rs.3,97,800/- -

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.12,52,900/- is hereby enhanced to Rs.16,50,700/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellants are directed to pay the Court fee, if any on the enhanced amount of compensation. The respondents are jointly and severally directed to deposit the enhanced award amount now determined by this Court, together 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 first appellant is permitted to withdraw her share of the enhanced award amount now determined by this Court, as per the ratio of apportionment fixed by the Tribunal, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. The shares of the minor appellants 2 and 3 are directed to be deposited in any one of the Nationalized Bank, till the minor appellants 2 and 3 attain majority. On such deposit, the first appellant, being the mother of the minor appellants 2 and 3 is permitted to withdraw the accrued interest, once in three months for the welfare of the minor appellants 2 and 3. No costs.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

To

1.The Special District Judge,
Motor Accident Claims Tribunal,
Salem.

2.The Section Officer,
VR Section,
High Court,
Madras.

+2 cc to Mr.C.Paraneedharan Advocate sr34282

+1 cc to Mr.J.Chandran Advocate sr34979

C.M.A.No.2136 of 2019

br(co)
aa25/10/2019

WEB COPY