



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.599 of 2018

1.Gowravammal  
2.Minor Sanjay  
3.Minor Ranjani  
4.Nagammal  
5.Kandan

.. Appellants/Claimants

(Minor petitioners are rep. by  
their mother 1<sup>st</sup> petitioner)

Vs.

1.Jegadesh  
(R1 remained exparte his presence may be dispensed with)

2.ICICI Lombard General Insurance Company Limited,  
No.84/85, Waltax Road,  
Parry's Corner,  
Chennai - 600 003.

.. Respondents / Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 16.07.2014 made in M.C.O.P.No.501 of 2013 on the file of the Motor Accident Claims Tribunal, Poonamallee, II Additional District Court, Poonamallee.

For Appellants : Ms.A.Subadra  
for Ms.M.Malar

For R2 : Ms.R.Sreevidhya

For R1 : Exparte

#### 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 16.07.2014 made in M.C.O.P.No.501 of 2013 on the file of the Motor Accident Claims Tribunal, Poonamallee, II Additional District Court, Poonamallee.



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2.The appellants are claimants in M.C.O.P.No.501 of 2013 on the file of the Motor Accident Claims Tribunal, Poonamallee, II Additional District Court, Poonamallee. The appellants filed the said claim petition claiming a sum of Rs.15,00,000/- as compensation for the death of one Madhu, who died in the accident that took place on 25.05.2013. 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 1<sup>st</sup> respondent and directed the 2<sup>nd</sup> respondent-Insurance Company being insurer of the said motorcycle to pay a sum of Rs.11,20,800/- 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 Tribunal failed to consider the income and occupation of the deceased. The deceased was working as a driver and was earning a sum of Rs.18,000/- per month. The Tribunal erred in fixing a meagre sum of Rs.6,500/- per month as income of the deceased. The amounts awarded by the Tribunal under different heads are meagre and 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 2<sup>nd</sup> respondent-Insurance Company contended that the appellants failed to prove the nature of work, avocation, age and income of the deceased. In the absence of any material, the Tribunal rightly fixed notional income of the deceased at Rs.6,500/- per month. The deceased was aged 35 years at the time of the accident. The correct multiplier is only '16'. The Tribunal erroneously applied multiplier '17'. The amounts awarded by the Tribunal under different heads are not meagre 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 2<sup>nd</sup> 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 driver and was earning a sum of Rs.18,000/- per month. The appellants failed to produce the documents to substantiate the said contention. In the absence of any material, the Tribunal has fixed notional income of the deceased at Rs.6,500/- per month. The accident is of the year 2013. The notional income fixed by the Tribunal is meagre. Hence, a sum of Rs.7,500/- per month is fixed as notional income of the deceased. The deceased was aged 35 years at the time of accident. The Tribunal has not



granted any enhancement for future prospects. The appellants are entitled to 40% enhancement towards future prospects. The Tribunal erroneously applied '17'. The correct multiplier is only '16'. Thus, the amount granted by the Tribunal towards compensation for loss of revenue is modified to Rs.15,12,000/- [(Rs.7,500/- + 3,000) (40% of Rs.7,500) x 12 x 16 x 3/4)]. The Tribunal has awarded a sum of Rs.25,000/- towards loss of consortium to the 1<sup>st</sup> appellant and the same is enhanced to Rs.40,000/-. The Tribunal has awarded a sum of Rs.5,000/- towards funeral expenses and the same is enhanced to Rs.15,000/-. The Tribunal has not awarded any amount towards loss of estate. A sum of Rs.15,000/- is granted towards loss of estate. The amounts awarded by the Tribunal under other heads 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 revenue                                     | 10,60,800                       | 15,12,000                         | Enhanced                               |
| 2.   | Loss of consortium to the 1 <sup>st</sup> appellant | 25,000                          | 40,000                            | Enhanced                               |
| 3.   | Loss of love and affection to the appellants 2 & 3  | 20,000                          | 20,000                            | Confirmed                              |
| 4.   | Loss of love and affection to the appellants 4 & 5  | 5,000                           | 5,000                             | Confirmed                              |
| 5.   | Transport expenses                                  | 5,000                           | 5,000                             | Confirmed                              |
| 6.   | Funeral expenses                                    | 5,000                           | 15,000                            | Enhanced                               |
| 7.   | Loss of estate                                      | -                               | 15,000                            | Granted                                |
|      | Total                                               | Rs.11,20,800/-                  | Rs.16,12,000/-                    | Enhanced by Rs.4,91,200/-              |



7. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.11,20,800/- is hereby enhanced to Rs.16,12,000/- 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 2<sup>nd</sup> respondent-Insurance Company is directed to deposit the enhanced 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, 4 & 5 are permitted to withdraw their respective share from the enhanced award amount on the basis of apportionment fixed by the Tribunal along with proportionate interest and costs, less the amount if any, already withdrawn. The share of the minor appellants 2 & 3 is directed to be deposited in any one of the Nationalised Bank till they attain majority. The 1<sup>st</sup> appellant being the mother of the appellants 2 & 3 is permitted to withdraw the accrued interest once in three months for the welfare of the minors. No costs.

Sd/-  
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

mtl

To

1.The II Additional District Judge,  
Motor Accidents Claims Tribunal,  
Poonamallee.

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

+1 cc to M/s.M.Malar, Advocate, S.R.No.24108

+1 cc to M/s.R.Sree Vidhya, Advocate, S.R.No.25249

C.M.A.No.599 of 2018

NRL(CO)  
SSM(08/11/2019).