

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.03.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.694 of 2018

1.S.Arun Kumar
2.Minor.Sri Lekha
3.Minor.Swetha .. Appellants/Petitioners

(Minor appellants 2 and 3 are represented
by their father, the first appellant herein)
Vs.

1.M/s.K.V.L.Industries,
Old No.98/2, New No.28/913,
Ramadass Street, Krishnapuram,
Ambathur, Chennai - 600 053.
2.ICICI Lombard General Insurance Company Limited,
No.142, First Floor, ECR Main Road,
Pondicherry - 1. .. Respondents/Respondents

(R1 remained exparte before Tribunal and
its appearance may be dispensed with)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 07.03.2016 made in M.C.O.P.No.1071 of 2013 on the file of the Motor Accident Claims Tribunal, III Additional District Court, Poonamallee, Tiruvallur.

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

For R2 : Mrs.R.Sree Vidhya

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J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation of the award dated 07.03.2016 made in M.C.O.P.No.1071 of 2013 on the file of the Motor Accident Claims Tribunal, III Additional District Court, Poonamallee, Tiruvallur.

2.The appellants are the claimants in M.C.O.P.No.1071 of 2013 on the file of the Motor Accident Claims Tribunal, III Additional District Court, Poonamallee, Tiruvallur. They filed the above said claim petition, claiming a sum of Rs.12,00,000/- as compensation for the death of one A.Sumithra @ Nagammal, who died in the accident that took place on 08.11.2013.

3.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 TATA ACE belonging to the first respondent and directed the second respondent-Insurance Company, being the insurer of the vehicle to pay a sum of Rs.10,05,000/- as compensation to the appellants.

4.Not being satisfied with the amount granted by the Tribunal, the appellants have come out with the present appeal seeking enhancement of compensation.

5.The learned counsel appearing for the appellants contended that the deceased was a flower vendor and was earning a sum of Rs.500/- per day. The Tribunal erroneously fixed meager sum of Rs.5,000/- as monthly income of the deceased. The deceased was aged 31 years at the time of accident and the Tribunal has not granted any enhancement towards future prospects. The total compensation awarded by the Tribunal under different heads are meager and prayed for enhancement of compensation.

6.Per contra, Mrs.R.Sree Vidhya, learned counsel appearing for the second respondent-Insurance Company contended that the appellants have not let in any material evidence to prove the avocation and income of the deceased. In the absence of material evidence, the Tribunal rightly fixed a sum of Rs.5,000/- as monthly income and granted compensation towards loss of income, which is not meager. The amount awarded by the Tribunal under conventional heads are excessive and appellants are not entitled for any enhancement and prayed for dismissal of the appeal.

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

8.From the materials available on record it is seen that the appellants have contended that the deceased was a flower vendor and was earning a sum of Rs.500/- per day. They have failed to substantiate their said contention. In the absence of material evidence, the Tribunal fixed a sum of Rs.5,000/- as monthly income of the deceased and the same is meager. The accident occurred in the year 2013 and a sum of Rs.6,500/- is fixed as monthly income of the deceased. The deceased was 31

years at the time of accident and the appellants are entitled to 40% enhancement towards future prospects. The deceased was 31 years at the time of accident and the Tribunal erroneously applied multiplier '17'. The correct multiplier applicable is '16'. In view of the above, the amount awarded by the Tribunal towards loss of income is modified to Rs.11,64,800/- [Rs.6,500/- + Rs.2,600/- (40% of Rs.6,500/-) x 12 X 16 x 2/3]. The Tribunal has awarded a sum of Rs.25,000/- towards funeral expenses, which is excessive and the same is hereby reduced to Rs.15,000/-. A sum of Rs.1,00,000/- awarded by the Tribunal towards loss of consortium to the first appellant is excessive and the same is hereby reduced to Rs.40,000/-. The Tribunal has awarded a sum of Rs.1,00,000/- towards pain and sufferings to the first appellant. The appellants are not entitled to any amount towards pain and suffering and hence the same is liable to be set aside and it is hereby set aside. The Tribunal has awarded excessive sum of Rs.1,00,000/- towards loss of love and affection to the appellants 2 and 3 and the same is reduced to Rs.80,000/-. The Tribunal has not awarded any amount towards loss of estate. Therefore, a sum of Rs.15,000/- is granted by this Court towards loss of estate. 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	6,80,000/-	11,64,800/-	enhanced
2.	Loss of consortium	1,00,000/-	40,000/-	reduced
3.	Loss of love and affection	1,00,000/-	80,000/-	reduced
4.	Pain and sufferings	1,00,000/-	-	set aside
5.	Funeral expenses	25,000/-	15,000/-	reduced
6.	Loss of estate	-	15,000/-	granted
	Total	Rs.10,05,000/-	Rs.13,14,800/-	enhanced by Rs.3,09,800/-

9. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.10,05,000/- is hereby enhanced to Rs.13,14,800/- 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. It is made clear that the appellants shall not be entitled to any interest for the delay period in filing the appeal on the amount of Rs.3,09,800/- enhanced by this Court. The second 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 first appellant is permitted to withdraw the respective 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 Banks, till the minor appellants attain majority. On such deposit, the first appellant, being the father of the minor appellants is permitted to withdraw the accrued interest, once in three months for the welfare of the minor appellants 2 and 3. No costs.

Sd/-

Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

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To

1.The III Additional District Judge,
Motor Accident Claims Tribunal,
Poonamallee,
Tiruvallur.

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

+1cc to Ms.M.Malar, Advocate SR.No.26917

+1cc to Mrs.R.Sree Vidhya, Advocate SR.No.28087

C.M.A.No.694 of 2018

RJI (CO)
GMY (11/07/2019)