



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.03.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.768 of 2018

1.S.M.Ashfaqunnissa
2.M.Kalellul Rahman

.. Appellants

Vs.

1.M.Antony Selvan
2.IFFCO TOKIO General Insurance Company Limited,
Legal Department, IFFCO Bhavan IV Floor,
No.123, Habibulla Road, T.Nagar,
Chennai - 600 017.

.. Respondents

(R1 remained exparte before Tribunal and
notice 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 19.01.2017 made in M.C.O.P.No.3070 of 2013 on the file of the Motor Accident Claims Tribunal, Chief Small Causes Court, Chennai.

For Appellants: Mr.K.Suryanarayanan for
Mr.P.Natarajan

For R2 : No Appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation of the award dated 19.01.2017 made in M.C.O.P.No.3070 of 2013 on the file of the Motor Accident Claims Tribunal, Chief Small Causes Court, Chennai.

2.The appellants are the claimants in M.C.O.P.No.3070 of 2013 on the file of the Motor Accident Claims Tribunal, Chief Small Causes Court, Chennai. They filed the above said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the death of one Munavar Basha, who died in the accident that took place on 12.04.2013.



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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 directed the second respondent-Insurance Company to pay a sum of Rs.4,48,296/- as compensation to the appellants.

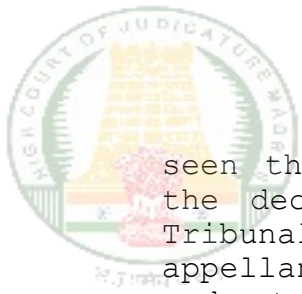
4.Not being satisfied with the amount granted by the Tribunal, the appellants have come out with the present appeal seeking enhancement of compensation.

5.The learned counsel appearing for the appellants contended that the deceased was a retired staff from P & T Office and was receiving a sum of Rs.15,000/- per month as pension and was earning a sum of Rs.15,000/- per month by doing textile business in the name and style of "Star Dresses". The Tribunal erred in taking into account only basic pension and failed to take other amounts and granted meager amount as compensation towards loss of dependency. The Tribunal erroneously rejected the contention of the appellants that deceased was doing textile business in the name and style of "Star Dresses". The appellants have produced rental agreement and proved that deceased was doing business in that place. The Tribunal ought to have awarded a sum of Rs.1,00,000/- as compensation to the first appellant towards loss of consortium and Rs.1,00,000/- each towards loss of love and affection to the appellants and prayed for enhancement of compensation.

6.The learned counsel appearing for the appellants contended that the first respondent remained exparte before Tribunal and no notice is necessary for the first respondent. The Tribunal directed the second respondent-Insurance Company to pay compensation to the appellants. Though notice has been served on the second respondent-Insurance Company and its name is printed in the cause list, there is no representation on behalf of the second respondent, either in person or through counsel.

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

8.From the materials available on record it is seen that the appellants have contended that the deceased was a retired staff from P & T Office and was receiving a sum of Rs.15,000/- per month as pension. To substantiate the same, the appellants have filed Ex.P13/copy of the pension Identity Card of the deceased and Ex.P14/copy of pension book. Apart from Ex.P13 and P14, the appellants have not produced any Bank Pass Book of the deceased, when the deceased was receiving a sum of Rs.15,000/- as pension every month. From the award of the Tribunal it is



seen the Tribunal considering the pension pass book, held that the deceased was getting a sum of Rs.6,666/- per month. The Tribunal rejected the rental agreement and contention of the appellants that deceased was doing textile business in the name and style of "Star Dresses". Considering the facts that the accident occurred in the year 2013, rental agreement and pension received by the deceased, the monthly income of the deceased is fixed at Rs.10,000/-. The amount awarded by the Tribunal towards loss of income is modified to Rs.5,60,000/- (Rs.10,000/- X 12 X 7 X 2/3). The Tribunal has awarded a sum of Rs.25,000/- towards loss of consortium to the first appellant, which is meager and the same is hereby enhanced to Rs.40,000/-. A sum of Rs.25,000/- awarded by the Tribunal towards funeral expenses is excessive and the same is reduced to Rs.15,000/-. The Tribunal has not awarded any amount towards loss of estate and a sum of Rs.15,000/- is granted by this Court towards loss of estate. The amount 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 income	3,73,296/-	5,60,000/-	enhanced
2.	Loss of consortium	25,000/-	40,000/-	enhanced
3.	Loss of love and affection	20,000/-	20,000/-	confirmed
4.	Transportation	5,000/-	5,000/-	confirmed
5.	Funeral expenses	25,000/-	15,000/-	reduced
6.	Loss of estate	-	15,000/-	granted
	Total	Rs.4,48,296/-	Rs.6,55,000/-	enhanced by Rs.2,06,704/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.4,48,296/- is hereby enhanced to Rs.6,55,000/- 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 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, appellants are permitted to withdraw their 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. No costs.

Sd/-
Assistant Registrar (CS-VI)

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Sub Assistant Registrar

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To

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

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

+lcc to Mr.P.Natarajan, Advocate SR.No.29042

C.M.A.No.768 of 2018

KS (CO)
GMY (19/12/2019)