



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.03.2019

WEB COPY

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.819 of 2018

1.G.Renugadevi

2.Nithishree (Minor)  
(Rep. by her mother and natural guardian  
1<sup>st</sup> appellant herein)

3.K.Elumalai

4.E.Kuppammal

.. Appellants/Petitioners

Vs.

1.T.S.Sekar

2.IFFCO TOKIO General Insurance Co., Ltd.,  
IFFCO Bhavan, 4<sup>th</sup> Floor,  
128, Habibullah Road,  
T.Nagar, Chennai - 600 117.

.. Respondents/ Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 13.11.2017 made in M.C.O.P.No.1384 of 2013 on the file of the Motor Accident Claims Tribunal, II Judge, Small Causes Court, Chennai.

For Appellants : Ms.Ramya V.Rao

For Respondents : No appearance

#### 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 13.11.2017 made in M.C.O.P.No.1384 of 2013 on the file of the Motor Accident Claims Tribunal, II Judge, Small Causes Court, Chennai.

2.The appellants are claimants in M.C.O.P.No.1384 of 2013 on the file of the Motor Accident Claims Tribunal, II Judge, Small Causes Court, Chennai. They filed the said claim petition claiming a sum of Rs.25,00,000/- as compensation for the death



of one Gangadharan, who died in the accident that took place on 20.10.2012. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by both the deceased/rider of motorcycle as well as the driver of the car belonging to the 1<sup>st</sup> respondent, fixed 25% : 75% contributory negligence on the part of the deceased as well as the driver of the car, awarded a sum of Rs.14,32,000/- as compensation to the appellants and directed the 2<sup>nd</sup> respondent/Insurance Company to pay a sum of Rs.10,74,000/- (75% of the amount of Rs.14,32,000/-) 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/claimants contended that the deceased was working as a security guard and was earning a sum of Rs.7,000/- per month including Rs.1,000/- as batta. The deceased was aged 28 years at the time of accident. The Tribunal erroneously fixed meagre sum of Rs.6,000/- per month as notional income of the deceased. The Tribunal has not awarded any amount towards loss of estate and prayed for enhancement of compensation.

4.Though notice served on the respondents 1 and 2 and their names are printed in the cause list, there is no representation on behalf of them either in person or through counsel.

5.Heard the learned counsel appearing for the appellants 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 aged 28 years at the time of accident, he was working as a security guard and was earning a sum of Rs.7,000/- per month including Rs.1,000/- as batta. The appellants have not filed any documents to prove their contention. In the absence of any material evidence, the Tribunal fixed age of the deceased as 29 years as per post-mortem certificate, fixed a sum of Rs.6,000/- per month as notional income of the deceased and granted 50% towards future prospects. The accident is of the year 2012. The notional income fixed by the Tribunal is meagre. A sum of Rs.7,500/- is fixed as notional income of the deceased. The appellants are entitled to only 40% enhancement towards future prospects instead of 50% enhancement awarded by the Tribunal. The Tribunal applied multiplier 17 and deducted 1/4<sup>th</sup> towards personal expenses. The loss of income granted by the Tribunal is modified to Rs.16,06,500/- (Rs.7,500/- + 3000 (Rs.7,500/- X 40%) x 12 x 17 x 3/4). The Tribunal has not awarded any amount towards loss of estate and loss of love & affection. This Court awards a sum of Rs.15,000/- and Rs.40,000/- towards loss of



estate and loss of love & affection respectively. The amounts awarded by the Tribunal under other heads are hereby 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             | 13,77,000                                                        | 16,06,500                                                        | Enhanced                               |
| 2.   | Loss of consortium         | 40,000                                                           | 40,000                                                           | Confirmed                              |
| 3.   | Funeral expenses           | 15,000                                                           | 15,000                                                           | Confirmed                              |
| 4.   | Loss of love and affection | -                                                                | 40,000                                                           | Granted                                |
| 5.   | Loss of estate             | -                                                                | 15,000                                                           | Granted                                |
|      | Total                      | Rs.14,32,000/- (75% of the award amount comes to Rs.10,74,000/-) | Rs.17,16,500/- (75% of the award amount comes to Rs.12,87,375/-) | Enhanced by Rs.2,13,375/-              |

7. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.10,74,000/- is hereby enhanced to Rs.17,16,500/- together with interest at the rate of 9% 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 1<sup>st</sup> appellant being wife of the deceased is entitled to a sum of Rs.6,87,375/-, 2<sup>nd</sup> appellant being daughter of the deceased is entitled to a sum of Rs.3,00,000/- and the appellants 3 and 4 being parents of the deceased are entitled to a sum of Rs.1,50,000/- each as compensation. The 2<sup>nd</sup> respondent/Insurance Company is directed to deposit 75% of the enhanced award amount now determined by this Court i.e., Rs.12,87,375/- 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 1, 3 & 4 are permitted to withdraw their respective share of the award amount, along with proportionate interest and



costs, less the amount if any, already withdrawn. The share of the minor 2<sup>nd</sup> appellant is directed to be deposited in any one of the Nationalised Banks till the minor attains majority. The 1<sup>st</sup> appellant being the mother of the 2<sup>nd</sup> appellant is permitted to withdraw the accrued interest once in three months for the welfare of the minor. No costs.

kj

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To  
1.The II Judge,  
Small Causes Court,  
Motor Accidents Claims Tribunal,  
Chennai.

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

+1cc to Mr.A.N.Viswanatha Rao, Advocate, SR.No.26220

C.M.A.No.819 of 2018

Kak(24/09/2019)