

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.07.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.No.3366 of 2017

1.P.Jagadambal
2.P.Dhanapal
3.P.Vadivel

... Appellants/Petitioner

Vs

1.G.Shanmugam
2.The United India Insurance Company Ltd.,
Rep by its Divisional Manager, having office at
TKM Complex, 2nd Floor, Katpadi Road,
Vellore Town ... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 30.05.2017 made in M.C.O.P.No.751 of 2015 on the file of the Motor Accident Claims Tribunal, I Additional District and Sessions Court, Vellore.

For Appellants : Mr.R.Nalliyappan

For R2 : Mr.S.Arunkumar

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 30.05.2017 made in M.C.O.P.No.751 of 2015 on the file of the Motor Accident Claims Tribunal, I Additional District and Sessions Court, Vellore.

2.The brief facts is as follows:

On 05.10.2013 at about 11.30 am when the deceased Pavunu ammal was crossing the road from west to east, a Hero Honda CD Dawn two wheeler bearing Reg.No.TN-23-J-5743 came from Vellore to Kaniyambadi driven by its driver in a rash and negligent manner and dashed the deceased as a result Pavunu ammal sustained grievous injuries and she was taken to GVMCH, Vellore and then shifted to Government General Hospital, Chennai and due to the

severe head injury, she died on 06.10.2013. Hence, the 1st petitioner mother of the deceased, petitioners 2 & 3 are brother of the deceased claimed a sum of Rs.23,00,000/- as compensation for the death of one Pavunu ammal.

3.The 2nd respondent/Insurance Company denied the mode of accident as stated in the claim petition and stated that there was no negligence or rashness on the part of the 1st respondent in driving the two wheeler as he was driving the same at a normal speed with utmost caution. But it was the deceased who suddenly crossed the road without observing the traffic and came into contact with the Hero Honda. Hence the accident occurred only due to the rash and negligence of the deceased. Further contended that the 1st respondent had no driving license at the time of the accident. There is a violation of policy condition. The sum claimed by the claimants is excessive and prayed for dismissal of the appeal.

4.The Tribunal after analysing the evidence and documents placed before the same has fixed the negligence on the rider of the 1st respondent's vehicle and awarded a sum of Rs.6,14,000/- as compensation under the following heads:

Loss of income	Rs.5,07,000/-
Loss of love and affection	Rs.75,000/-
Funeral expenses	Rs.25,000/-
Transportation	Rs.5,000/-
Loss towards personal belonging	Rs.2,000/-
Total	Rs.6,14,000/-

Aggrieved against the said award the claimants have preferred this appeal for enhancement of compensation.

5.In the grounds of appeal, the appellants have contended that the sum awarded by the Tribunal is very much meagre. The deceased was aged about 48 years and she was working as a coolie and was earning a monthly income of Rs.10,000/- but the Tribunal erroneously fixed monthly income of the deceased at Rs.6,500/-. Hence the sum awarded towards loss of love and affection at Rs.75,000/- is also very much meagre. The Tribunal has not awarded any sum towards loss of estate. The sum awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6.Heard Mr.R.Nalliyappan, learned counsel appearing for the appellants and Mr.S.Arunkumar, learned counsel appearing for the 2nd respondent/Insurance Company and perused all the materials available on record.

7.On perusal of the FIR and EX.R1/private investigation report it is clear that the negligence was on the part of the 1st respondent who had ride the two wheeler in a rash and negligent

manner and dashed against the deceased, who was trying to cross the road. Hence, the order of the Tribunal is directing the 2nd respondent/Insurance Company to pay the compensation at first instance and recover the same from the 1st respondent or from the owner of the insured vehicle.

8. From the materials available on record, it is seen that the appellants have contended that the deceased was working as a coolie and was earning a sum of Rs.10,000/- per month, but the appellants have failed to produce the documents to substantiate the said contention. In the absence of any materials, the Tribunal has rightly fixed monthly income of the deceased as Rs.6,500/- which is proper and reasonable. In view of the age of the deceased who was 50 years at the time of accident. The Tribunal applied multiplier '13' is correct. It is seen that the Tribunal has not awarded future prospects and hence this Court adds 10% towards future prospects and by deducting 50% towards personal expenses, has calculated sum towards loss of income at Rs.5,57,700/- [(Rs.6,500/- + 650 (Rs.6,500/- of 10%) x 12 x 13 x 50%)]. This Court is of the view that the sum awarded by the Tribunal towards loss of love and affection as Rs.75,000/- is very excessive and the same is reduced to Rs.40,000/-. Likewise the sum awarded by the at Rs.25,000/- towards funeral expenses and a sum of Rs.5,000/- towards transportation also not proper and reasonable and this Court awards a sum of Rs.15,000/- totally towards transportation and funeral expenses. Further considering the fact that the Tribunal has not awarded any amount towards loss of estate. A sum of Rs.15,000/- is granted towards loss of estate. The sum awarded by the Tribunal towards personal belonging is 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)
1.	Loss of income	Rs.5,07,000/-	Rs.5,57,700/-
2.	Loss of love and affection	Rs.75,000/-	Rs.40,000/-
3.	Funeral expenses	Rs.25,000/-	Rs.15,000/-
4.	Transportation	Rs.5,000/-	
5.	Loss towards personal belonging	Rs.2,000/-	Rs.2,000/-
6.	Loss of estate	-	Rs.15,000/-

	Total	Rs.6,14,000/-	Rs.6,29,700/-
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9.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.6,14,000/- is hereby enhanced to Rs.6,29,700/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. No Costs.

10.The appellants/claimants are directed to pay necessary Court fee, if any, on the enhanced compensation. The 2nd respondent/Insurance Company is directed to deposit the enhanced award amount now determined by this Court along with interest and costs at first instance and recover the same from the 1st respondent or from the owner of the insured vehicle, 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 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. No costs.

Sd/-

Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

mtl

To

1.The I Additional District and Sessions Judge,
Motor Accidents Claims Tribunal,
Vellore.

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

+1cc to Mr.R.Nalliyappan, Advocate, S.R.No. 611301
+1cc to Mr.S.Arun Kumar, Advocate, S.R.No. 61496

C.M.A.No.3366 of 2017

VG II(CO)
GN(06/02/2020)