

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.11.2019

CORAM:

THE HONOURABLE Mr. JUSTICE R.MAHADEVAN

Civil Miscellaneous Appeal No.711 of 2017

1.Mrs. Ellammal

2.G.Salini (Minor)

3.G.Sivanantham (Minor)

(Minors represented by their mother and
Natural friend, first appellant)

... Appellants /
Claimants.

Vs.

1. M/s. K.Radha Lakshmi Flame World,
Plot No.46 and 47 Selvaganapathy Nagar,
Seneerkuppam Village, Poonamallee,
Thiruvallur 620 001

2. Reliance General Insurance Company Ltd.,
Havitree Unit No.1, 3rd Floor,
No.23 Spurtank Road, Chetpet,
Chennai - 31

... Respondents /
Insured & Insurer

Civil Miscellaneous Appeal filed under Section 173 of the
Motor Vehicles Act, 1988, against the judgment and decree, dated
16.11.2012 passed in MCOP No.1616 of 2010 on the file of the
Motor Accident Claims Tribunal, Chief Small Causes Court,
Chennai.

For Appellant : Mr. V.Mohan Choudary

For Respondents: M/s. M.B. Gopalan Associates
Mr. N.Vijayaraghavan, for R-2.

J U D G M E N T

As against the claim made for a sum of Rs.17,00,000/- by the
claimants, who are the wife and children of one Ganapathy, who
died in a road traffic accident on 29.03.2010, the Tribunal,
after elaborate trial and contest, has awarded a sum of
Rs.16,15,540/- as total compensation payable to the claimants,
aggrieved over which, this Appeal is preferred by the
claimants / appellants.

2. The facts of the case are that on 29.03.2010 at about 23.30 hours, one Ganapathy was riding his motorcycle bearing Registration No.TN18-B-6447 near Pazhayalur Petrol Bunk and at that time, an Eicher Lorry bearing Registration No.TN20-AC-0039 came in a rash and negligent manner from behind and hit the motorcycle. Due to the said impact, the rider of the motorcycle sustained multiple injuries and died on the same day, in the Government General Hospital, Chengalpet. Hence the claimants filed a claim petition as against the respondents herein before the Tribunal.

3. Despite notice ordering twice, the first respondent / Insured was not served and hence considering the paucity of time, this Court takes up the Appeal itself on merits.

4. Heard the learned counsel appearing for the appellant and learned counsel for R-2/Insurer (contesting respondent).

5. There is no dispute with regard to the liability of the second respondent / Insurer in paying compensation to the appellants / claimants. Hence, this Court would like to deal with the quantum alone.

6. The learned counsel appearing for the appellants (claimants) submitted that the Tribunal has erred in awarding lesser compensation towards loss of consortium, funeral expenses and loss of affection, which needs significant increase; and in any event, the quantum arrived at by the Tribunal does not commensurate with the settled principles of law and hence it needs significant increase.

7. Per contra, the learned counsel for the second respondent / Insurer submitted that the Tribunal has considered each and every aspect into consideration and has arrived at the quantum of compensation; that the Tribunal has arrived at the quantum, which commensurates with the evidence and documents on record and hence interference of the same is uncalled for.

8. A perusal of the award of the Tribunal would go to show that based on Exs.P-7 and P-8-salary bills, the Tribunal has taken the monthly income of the deceased at Rs.8,753/-, by applying the future prospective increase in income at 50% based on the decision reported in 2009 ACJ 1298 (Sarla Verma and others v. Delhi Transport Corporation), and after deducting 1/3rd towards the personal expenses of the deceased, applied the multiplier of 15 and has assessed the loss of income at Rs.15,75,540/- (Rs.8,753/- x 12 x 15). The Tribunal has awarded a sum of Rs.10,000/- towards funeral expenses. This Court is of the view that the Tribunal has correctly analysed the documents and settled principles of law and has arrived at the

compensation under these two heads, viz., loss of income and funeral expenses, which, in the opinion of this Court, do not require any interference.

9. However, the Tribunal has awarded only sums of Rs.10,000/-, and Rs.20,000/- towards loss of consortium and loss of love and affection, which are not in consonance with the decisions of the Supreme Court in the cases of (National Insurance Company Limited Vs. Pranay Sethi), reported in 2017-13 SCALE 12, Rajesh v. Rajbir Singh (Civil Appeal No. 3860 of 2013 (Arising out of S.L.P. (Civil) No. 24825/2010)), wherein in the said cases the Supreme Court has awarded compensation under six digits under the heads, loss of consortium and loss of love and affection. Apart from the above, at the time of accident, the first appellant / wife was aged 34 and the children of the deceased were aged 15 and 14, and hence, the amount awarded under loss of consortium to first appellant and loss of love and affection to appellants 2 and 3 needs slight increase. Hence, the amount awarded towards loss of consortium is enhanced to Rs.40,000/- and loss of love and affection awarded to appellants 2 and 3 is enhanced to Rs.20,000/- each (Rs.40,000/- in total under this head). Hence, this Court is of the view that awarding a sum of Rs.16,65,540/-, as total compensation, would meet the ends of justice and it is awarded accordingly. The re-structured breakup details of the total amount of compensation reads thus:-

Heads	INR / Rs.
Loss of dependency	15,75,540.00
Loss of Consortium	40,000.00
Funeral expenses	10,000.00
Loss of love and affection	40,000.00
Total	16,65,540.00
Interest @	7.5%

10. In view of the above reasonings, this Civil Miscellaneous Appeal filed by the appellants / claimants stands partly-allowed, by enhancing the total amount of compensation from Rs.16,15,540/- to Rs.16,65,540/-. It is made clear that only for the compensation of Rs.16,15,540/- awarded by the Tribunal, the interest rate of 7.5% per annum shall be calculated from the date of claim petition. For the enhanced amount of Rs.50,000/- the interest rate of 7.5% per annum shall be calculated from the date of filing of this Appeal.

11. The second respondent / Insurance Company shall deposit the enhanced compensation amount, along with interest and costs, as awarded by this Court now, less the amount already deposited, if any, within a period of four weeks, from the date of receipt of a copy of this judgment.

12. At this juncture, the learned counsel for the appellants submitted that the minor claimants have now attained majority and hence they may be permitted to withdraw their share of compensation.

13. In view of the said submission, on such deposit being made, the claims Tribunal shall transfer the compensation amounts to the RTGS Account(s) of the claimants / appellants herein, within one week thereafter, as per the ratio of apportionment fixed by the Claims Tribunal.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

srk

To

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

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+2 CCS to Mr.V. Mohan Choudary, Advocate sr 93957
+1 Ccto Mr.M.B. Gopalan Associates sr 94239.

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