



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2290 of 2018

1.Prem Kumari

2.Ishowari Prasad Padhya

3.Krishna Prasad Paudel .. Appellants / Petitioners

Vs.

1.M/s.P.S.K.Engineering Construction and Co.  
No.2, Bhuvaneswari Complex,  
Dr.Sankaran Road, Namakkal - 637 001.  
(R1-Already set Exparte in Lower Court)  
(R1-Notice may be dispensed with)

2.United India Ins. Co. Ltd.,  
Motor III Party Claims Office  
Shilling Buildings, 134 Greaves Road,  
Chennai - 600 006. .. Respondents / Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 23.02.2018 made in M.C.O.P.No.362 of 2016 on the file of the Motor Accident Claims Tribunal, Chief Judge, Court of Small Causes, Chennai.

For Appellants : Ms.Y.Jayanthi Bhaskar  
for Mr.J.Mahalingam

For R2 : Mr.M.J.Vijayaraghavan

#### 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 23.02.2018 made in M.C.O.P.No.362 of 2016 on the file of the Motor Accident Claims Tribunal, Chief Judge, Court of Small Causes, Chennai.

2.The appellants are claimants in M.C.O.P.No.362 of 2016 on the file of the Motor Accident Claims Tribunal, Chief Judge,



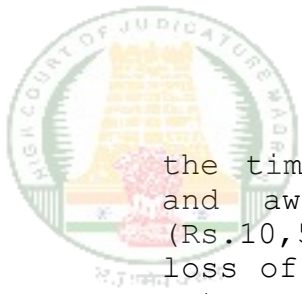
Court of Small Causes, Chennai. They filed the said claim petition claiming a sum of Rs.50,00,000/- as compensation for the death of one Pushparaj Paudel, who died in the accident that took place on 28.04.2015. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the tractor belonging to the 1<sup>st</sup> respondent and directed the 2<sup>nd</sup> respondent/Insurance Company being the insurer of the said tractor to pay a sum of Rs.16,17,600/- 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 contended that the deceased was working as a Security at Madras Institute of Technology Hostel, Chrompet, Chennai - 44 and was earning a sum of Rs.350/- per day. During Government holidays and Sundays, the salary will be doubled as Rs.700/- per day. The Tribunal erred in fixing only a sum of Rs.10,500/- as monthly income of the deceased. The Tribunal ought to have granted 50% enhancement towards future prospects and deducted 1/3<sup>rd</sup> towards personal expenses. The amounts awarded by the Tribunal towards loss of pecuniary benefits, funeral expenses and loss of estate are meagre. The Tribunal has not awarded any amount towards loss of love and affection and prayed for enhancement of compensation.

4.Per contra, the learned counsel appearing for the 2<sup>nd</sup> respondent/Insurance Company contended that the Tribunal after considering both oral and documentary evidence in proper perspective, awarded compensation, which is not meagre. The appellants have not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

5.Heard the learned counsel appearing for the appellants as well as the 2<sup>nd</sup> respondent/Insurance Company and perused all the materials available on record.

6.From the materials available on record, it is seen that the appellant has contended that the deceased was working as a Security at Madras Institute of Technology Hostel, Chrompet, Chennai - 44 and was earning a sum of Rs.12,000/- per month. To prove the same, the appellants have examined PW2 to PW4 who are co-workers of the deceased. The Tribunal considering the evidence of PW1 to PW4 has fixed a sum of Rs.10,500/- per month as notional income of the deceased on the ground that the salary of the deceased varied from month to month and it depends upon the duty attended by the deceased. The Tribunal granted 40% enhancement towards future prospects as per the judgment of the Hon'ble Apex Court and deducted 50% towards personal expenses as the deceased was a bachelor. The deceased was aged 25 years at



the time of the accident. The Tribunal applied multiplier '18' and awarded a sum of Rs.15,87,600/- (Rs.10,500/- + 4200 (Rs.10,500/- X 40%) X 12 X 18 X 50%) as compensation towards loss of pecuniary benefits, which is in order. The Tribunal has not awarded any amount towards loss of love & affection. The appellants 1 & 2 are entitled to a sum of Rs.40,000/- each towards loss of love & affection and 3<sup>rd</sup> appellant is entitled to a sum of Rs.20,000/- towards loss of love & affection. The amounts awarded by the Tribunal under other heads are just and reasonable and same 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 pecuniary benefits                                            | 15,87,600                       | 15,87,600                         | Confirmed                              |
| 2.   | Loss of estate                                                        | 15,000                          | 15,000                            | Confirmed                              |
| 3.   | Funeral expenses                                                      | 15,000                          | 15,000                            | Confirmed                              |
| 4.   | Loss of love & affection Rs.40,000/- each to the appellants 1 & 2     | -                               | 80,000                            | Granted                                |
| 5.   | Loss of love & affection Rs.20,000/- to the 3 <sup>rd</sup> appellant | -                               | 20,000                            | Granted                                |
|      | Total                                                                 | Rs.16,17,600/-                  | Rs.17,17,600/-                    | Enhanced by Rs.1,00,000/-              |

7.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.16,17,600/- is hereby enhanced to Rs.17,17,600/- together with interest at the rate of 7.5% 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 mother of the deceased is entitled to a sum of Rs.7,84,000/-, the 2<sup>nd</sup> appellant being



father of the deceased is entitled to a sum of Rs.7,84,000/- and the 3<sup>rd</sup> appellant being brother of the deceased is entitled to a sum of Rs.1,49,600/- as compensation. The 2<sup>nd</sup> 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 appellants/claimants are permitted to withdraw their respective share of the enhanced award amount, along with proportionate interest and costs, after adjusting the amount if any, already withdrawn. No costs.

Sd/-  
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

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To

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

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

C.M.A.No.2290 of 2018

NRJK(CO)  
SSM(10/10/2019) .