

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2980 of 2018

1.S.Muruganantham
2.S.Saravanakumar

.. Appellants/ Petitioners

Vs.

1.V.Kasilingam
2.Iffco-Tokio General Insurance
Company Ltd.,
Iffco Bhavan, 4th Floor,
No.128, Habibullah Road,
T.Nagar,
Chennai - 600 017

... Respondents/ Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 28.07.2017 made in M.C.O.P.No.1693 of 2015 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai.

For Appellants : Mr.A.N.Vishwanatha Rao

For RR2 : Ms.K.Saraswathi

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation of the award dated 28.07.2017 made in M.C.O.P.No.1693 of 2015 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai.

2.The appellants are claimants in M.C.O.P.No.1693 of 2015 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai. They filed the above said claim petition, claiming a sum of Rs.30,00,000/- as compensation for the death of their mother viz.,Mrs.Susila, who died in the accident that took place on 20.12.2014.

3.The Tribunal considering the pleadings, oral and

documentary evidence, held that the accident occurred due to the rash and negligent driving by the rider of the motorcycle belonging to the first respondent and directed the second respondent-Insurance Company, being the insurer of the vehicle to pay a sum of Rs.13,32,800/- as compensation to the appellants/claimants.

4. Not being satisfied with the award amount granted by the Tribunal dated 28.07.2017 made in M.C.O.P.No.1693 of 2015, the appellants have come out with the present appeal seeking enhancement of compensation.

5. The learned counsel appearing for the appellants submitted that the Tribunal erred in fixing meager amount of Rs.7,500/- as notional income per month of the deceased for the accident that took place in the year 2014. The Tribunal ought to have fixed a sum of Rs.10,000/- per month as the notional income and awarded compensation for loss of income. The appellants have lost their father in the young age and lost their mother also. The appellants are aged 19 and 20 years at the time of accident and were non-earning members and prayed for enhancement of compensation.

6. Per contra, the learned counsel appearing for the second respondent-Insurance Company contended that the appellants have not produced any material to show the income of the deceased earned at the time of accident. In the absence of any documents, the Tribunal has fixed notional income of the deceased at Rs.7,500/- per month, which is correct. The Tribunal has awarded excessive amounts under different heads and prayed for dismissal of the appeal.

7. I have heard the learned counsel appearing for the appellants as well as the second respondent-Insurance Company and perused all the materials available on record.

8. From the materials on record, it is seen that the appellants in the claim petition have stated that the deceased was earning a sum of Rs.10,000/- per month. The appellants have not produced any material to substantiate their contention that their mother was earning a sum of Rs.10,000/- per month. In the absence of any evidence to substantiate their claim, the Tribunal fixed a sum of Rs.7,500/- as notional income of the deceased per month and awarded 30% towards future prospects. The accident occurred on 20.12.2014. Therefore, a sum of Rs.9,000/- is fixed as notional income of the deceased per month. The deceased was aged 45 years at the time of accident. Hence, the appellants are entitled to only 25% enhancement towards future prospects. The amount awarded by the Tribunal towards loss of income is modified as Rs.12,60,000/- [Rs.9,000/- + Rs.2,250/-

(25% of Rs.9,000/-) X 12 X 14 X 2/3]. The amounts 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.	Pecuniary loss	10,92,000/-	12,60,000/-	enhanced
2.	Loss of Love and Affection	2,00,000/-	2,00,000/-	confirmed
3.	Funeral Expenses	25,000/-	25,000/-	confirmed
4.	Transportation	10,000/-	10,000/-	confirmed
5.	Medical Expenses	5,796/-	5,796/-	confirmed
	Total	Rs.13,32,796/-	Rs.15,00,796/-	enhanced by Rs.1,68,000/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.13,32,796/- is hereby enhanced to Rs.15,00,796/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. 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, the appellants are permitted to withdraw their respective share of the enhanced award amount 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.

krk

WEB COPY

Sd/-

Assistant Registrar (CS IV)

//True Copy//

Sub Assistant Registrar

To

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

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

+2cc to Mr.A.N.Viswanatha Rao, Advocate, SR.No.2062/19
+1cc to Mr.C.R.Krishnamoorthy, Advocate, SR.No.1743/19

C.M.A.No.2980 of 2018

Kak(06/08/2019)



WEB COPY