



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.01.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3082 of 2018

1. Lingesan
2. Gandhi

..Appellants / Petitioners

/Vs/

1. Kannan
2. Royal Sundaram Insurance
Company Limited,
No.2, L.B.Road, Adayar,
Chennai-600 020.

..Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of The Motor Vehicles Act, 1988, against the judgment and decree dated 18.09.2017 and made in M.A.C.T.O.P.No.539 of 2011 on the file of the 2nd Additional District Court, Thiruvallur at Poonamallee.

For Appellants : Ms.A.Subadra

For Respondent : Ms.C.Harini
No.2 for Mr.M.B.Raghavan

J U D G M E N T

This Civil Miscellaneous Appeal is filed against the judgment and decree dated 18.09.2017 made in M.A.C.T.O.P.No.539 of 2011 on the file of the 2nd Additional District Court, Thiruvallur at Poonamallee.

2.By consent of both the parties, this Civil Miscellaneous Appeal is taken up for final disposal at the admission stage itself.

3.The appellants are the claimants in M.A.C.T.O.P.No.539 of 2011 on the file of the 2nd Additional District Court, Thiruvallur at Poonamallee. They have filed the above claim petition claiming a sum of Rs.22,00,000/- as compensation for the death of one Sasisekaran, who died in the accident that took place on 23.04.2011.



4.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the Tipper lorry belonging to the first respondent and directed the second respondent as insurer of the vehicle to pay a sum of Rs.12,64,740/- as compensation to the appellants.

5.Not being satisfied with the award amount granted by the Tribunal, the appellants have come out with the present appeal for enhancement of compensation.

6.The learned counsel appearing for the appellants contended that the deceased was a final year student in Madha Engineering College and was aged 21 years at the time of accident. The Tribunal ought to have fixed more amount as notional income of the deceased and granted enhancement towards future prospects. The Tribunal erred in taking the age of the mother of the deceased for applying multiplier. The Tribunal ought to have taken only the age of the deceased for applying multiplier. The Tribunal ought to have awarded compensation for mental agony and more compensation for loss of love and affection and the amount awarded under the different heads are meager and prayed for enhancement of compensation.

7.Per contra, the learned counsel appearing for the second respondent contended that the offer letter produced by the appellants, which was marked as Ex.P.9 lapsed after one month of issue of the said letter. The deceased failed to comply with the condition mentioned in the said offer letter. The deceased is having arrears in his subject and the deceased will not get job as per the offer letter in Ex.P.9. The second respondent Insurance Company has proved the same by examining RW.1 and RW.2 and by cross-examining PW.3. The amounts awarded by the Tribunal are not meager and prayed for dismissal of appeal.

8.Heard the learned counsel appearing for the appellants as well as the second respondent Insurance Company and perused all the materials on record.

9.From the materials on record, it is seen that the deceased was a final year Engineering student in Madha Engineering College. Even though the deceased got an offer letter on a monthly salary of Rs.14,000/- per month, he has not fulfilled the condition mentioned in Ex.P.9 and the said offer had lapsed. Considering the fact that the deceased should have completed his PG.Degree course and would have got a decent job with reasonable salary, a sum of Rs.10,000/- fixed as notional income of the deceased by the Tribunal is enhanced to Rs.12,000/- per month. The deceased was 21 years at the time of the accident. The Tribunal has not awarded any amount for future prospects and also erred in applying multiplier 12, taking into consideration the age of the mother of the deceased. As per the judgment of



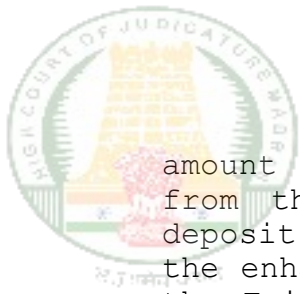
the Hon'ble Apex Court reported in 2017 (2) TNMAC 609 (SC) (National Insurance Company V. Pranay Sethi), the age of the deceased is basis for applying multiplier and the appellants are entitled to 40% enhancement towards future prospects. The deceased was a bachelor. The Tribunal erred in deducting 1/3rd towards personal expenses instead of 50%. For the above reasons, the amount awarded by the Tribunal for loss of income is modified as follows:

$$\text{Rs.12,000/-} + 4,800/- (40\% \text{ of Rs.12,000}) \times 12 \times 18 \times \frac{1}{2} = \text{Rs.18,14,400/-}$$

10.The Tribunal has awarded a sum of Rs.25,000/- for funeral expenses and the same is excessive and is reduced to Rs.15,000/-. The Tribunal has not awarded any amount for loss of estate and hence, a sum of Rs.15,000/- is granted for loss of estate. The amounts awarded by the Tribunal under all other heads are fair and reasonable and the 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 income	10,39,740	18,14,400	enhanced
2.	Funeral Expenses	25,000	15,000	reduced
3.	Loss of estate	-	15,000	granted
4.	Love and affection, pain and suffering	2,00,000/-	2,00,000	confirmed
	Total	12,64,740/-	20,44,400/-	Enhanced by Rs.7,79,660/-

11.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.12,64,740/- is hereby enhanced to Rs.20,44,400/ 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 order. On such deposit, the appellants are permitted to withdraw their share of the enhanced award amount on the basis of apportionment fixed by the Tribunal, along with interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

sms/rpl

To

1. The 2nd Additional District Judge,
Motor Accident Claims Tribunal,
Thiruvallur at Poonamallee.
2. The Section Officer,
V.R.Section, High Court, Chennai.

+1 cc to Mr.M.Malar, Advocate, S.R.No.4421

+1 cc to M/s.M.B.Gopalan Associates, Advocate, S.R.No.3801

C.M.A.No.3082 of 2018

KK(CO)
SSM(04/10/2019) .