

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.198 of 2020

1.Gyanthi Devi @ Dhyanti Devi
2.Umashankar Ram
3.Anu Devi
4.Minor. Nisha Kumari
5.Minor. Akash Kumar
6.Minor. Munni Kumari
7.Minor. Kajal Kumari ... Appellants/Petitioner
(Minor appellants 4 to 7 are represented
by their mother and next friend, Gyanthi
Devi @ Dhyanti Devi, 1st appellant)

Vs.

1.M.Mani Bharath
2.The Oriental Insurance Company Limited,
No.115/216, Prakasam Road,
Chennai - 600 108. ... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 30.07.2019 made in M.C.O.P.No.165 of 2016 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.I, Small Causes Court, Chennai.

For Appellants : Mr.Amar D.Pandiya

For R2 : Mr.J.Chandran

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 30.07.2019 made in M.C.O.P.No.165 of 2016 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.I, Small Causes Court, Chennai.

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.C.O.P.No.165 of 2016 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.I, 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 one Bikash Kumar Rajan, who died in the accident that took place on 11.10.2015.

4.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the rider of the motorcycle belonging to the first respondent and directed the 2nd respondent-Insurance Company, being the insurer of the motorcycle to pay a sum of Rs.12,68,400/- as compensation to the appellants.

5.Not being satisfied with the amounts awarded by the Tribunal, the appellants have come out with the present appeal.

6.The learned counsel appearing for the appellants contended that the deceased was working as a Helper in Vaibhav Steel Company, Chennai and was earning a sum of Rs.15,000/- per month. But, the Tribunal fixed a meagre sum of Rs.7,000/- per month as notional income of the deceased. The Tribunal ought to have fixed a sum of Rs.15,000/- per month as notional income of the deceased. The amounts awarded by the Tribunal towards loss of love and affection and funeral expenses are meagre. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

7.Per contra, the learned counsel appearing for the second respondent-Insurance Company contended that the appellants have not produced any material evidence to prove that the deceased was earning a sum of Rs.15,000/- per month. In the absence of any material evidence to prove the avocation and income of the deceased, a sum of Rs.7,000/- per month fixed by the Tribunal as notional income of the deceased is not meagre. The amounts awarded by the Tribunal under different heads are not meagre and prayed for dismissal of the appeal.

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

9.It is the contention of the appellants that the deceased was working as a Helper in Vaibhav Steel Company, Chennai and

was earning a sum of Rs.15,000/- per month. They failed to prove the said contention. In the absence of any material evidence with regard to avocation and income of the deceased, the Tribunal fixed a sum of Rs.7,000/- per month as notional income of the deceased. The accident occurred in the year 2015 and the notional income fixed by the Tribunal is meagre. As per Ex.P2/copy of postmortem certificate and Ex.P3/copy of death certificate, the deceased was aged 18 years at the time of accident. Therefore, considering the year of accident and age of the deceased, a sum of Rs.10,000/- per month is fixed as notional income of the deceased. The Tribunal granted 40% enhancement towards future prospects, applied multiplier '18' and deducted $\frac{1}{2}$ towards personal expenses, as the deceased was a bachelor at the time of accident. In view of the above, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.15,12,000/- {Rs.14,000/- [Rs.10,000/- + Rs.4,000/- (40% of Rs.10,000/-)] X 12 X 18 X $\frac{1}{2}$ }. The amounts awarded by the Tribunal towards loss of love and affection, funeral expenses, loss of estate and transportation are just and reasonable and hence, the same 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.	Loss of dependency	10,58,400/-	15,12,000/-	Enhanced
2.	Loss of love and affection	1,75,000/-	1,75,000/-	Confirmed
3.	Transportation	5,000/-	5,000/-	Confirmed
4.	Funeral expenses	15,000/-	15,000/-	Confirmed
5.	Loss of estate	15,000/-	15,000/-	Confirmed
	Total	Rs.12,68,400/-	Rs.17,22,000/-	enhanced by Rs.4,53,600/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.12,68,400/- is hereby enhanced to Rs.17,22,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellants are directed to pay the Court fee, if any, on the enhanced amount of compensation now determined by this Court. The 2nd 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 to the credit of M.C.O.P.No.165 of 2016 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.I, Small Causes Court, Chennai. On such deposit, the appellants 1 to 3 are permitted to withdraw their respective share of the enhanced award amount now determined by this Court, as per the ratio of apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. The share of the minor appellants 4 to 7 are directed to be deposited in any one of the Nationalized Bank, till the minor appellants 4 to 7 attain majority. On such deposit, the first appellant being the mother of the minor appellants 4 to 7 is permitted to withdraw the accrued interest once in three months for the welfare of the minor appellants 4 to 7. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Special Subordinate Judge No.I,
Motor Accident Claims Tribunal,
Small Causes Court,
Chennai.

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

+1cc to Mr.J.Chandran, Advocate Sr.7778

+1cc to Mr.Ravi Kumar, Advocate Sr.6973

WEB COPY

C.M.A.No.198 of 2020

mg[co]
srg 18/09/2020