

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1402 of 2015

1.Kavitha

2.Minor Poovithan

3.Minor Yazhini

4.Bakkiyam

(Minors/appellants 2 and 3 rep. by
Guardian/Next friend/1st appellant mother)

.. Appellants/Petitioners

Vs.

1.S.Premanand

2.United India Insurance Company Ltd.

Dr.Sankaran road, Namakkal. .. Respondents/Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 23.11.2012 made in M.C.O.P.No.428 of 2011 on the file of Motor Accident Claims Tribunal, Principal District Court, Namakkal.

For Appellants : Mr.MA.P.Thangavel

For R2 : Ms.I.Malar

For R1 : Notice Not Ready

J U D G M E N T

The Civil Miscellaneous Appeal is filed challenging the portion of the award dismissing the claim petition as against the 2nd respondent/Insurance Company as well as for enhancement of compensation granted by the Tribunal in the award dated 23.11.2012 made in M.C.O.P.No.428 of 2011 on the file of Motor Accident Claims Tribunal, Principal District Court, Namakkal.

2.The appellants are claimants in M.C.O.P.No.428 of 2011 on the file of Motor Accident Claims Tribunal, Principal District Court, Namakkal. The appellants filed the said claim petition claiming a sum of Rs.10,00,000/- as compensation for the death of one K.Boopathi, who died in the accident that took place on 21.04.2011.

3.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 lorry belonging to the 1st respondent and directed the 1st respondent, owner of the lorry to pay a sum of Rs.8,76,000/- as compensation to the appellants and dismissed the claim petition as against the 2nd respondent/Insurance Company.

4.Challenging the portion of the award dismissing the claim petition as against the 2nd respondent/Insurance Company as well as not being satisfied with the amounts awarded by the Tribunal, the appellants have come out with the present appeal.

5.The learned counsel appearing for the appellants/claimants contended that the Tribunal dismissed the claim petition as against the 2nd respondent/Insurance Company holding that the driver of the lorry belonging to the 1st respondent did not possess valid driving license at the time of accident. In the absence of driving license, the Tribunal ought to have directed the 2nd respondent/Insurance Company to pay compensation to the claimants at the first instance and recover the same from the owner of the vehicle. He further contended that the deceased was working as a Salesman in TASMAC shop and was earning a sum of Rs.10,000/- per month. The appellants have marked Ex.P6/Identity card issued by the TASMAC Department to prove his avocation. The Tribunal without considering the same, has fixed only a meagre sum of Rs.6,000/- per month as notional income of the deceased. There are four dependants of the deceased and the Tribunal ought to have deducted 1/4th instead of 1/3rd towards personal expenses. The Tribunal has not awarded any amount towards transportation. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the driver of the offending vehicle did not possess driving license at the time of accident and hence, the 2nd respondent is not liable to pay compensation. The Tribunal has rightly appreciated the above facts in proper perspective and dismissed the claim petition as against the 2nd respondent/Insurance Company. She further

contended that the appellants have not produced any document to substantiate their claim that the deceased was earning a sum of Rs.10,000/- per month. In the absence of any material evidence with regard to income of the deceased, the Tribunal has fixed a sum of Rs.6,000/- per month as notional income of the deceased, which is not meagre. The Tribunal after considering all the materials available on record in proper perspective, has awarded just compensation. The appellants have not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

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

8. From the materials available on record, it is seen that the accident has occurred due to rash and negligent driving by the driver of the lorry belonging to the 1st respondent. At the time of accident, the driver of the lorry did not possess driving license. It is well settled law that for not possessing driving license by the driver of the vehicle, the Insurance Company cannot be exonerated. The claimant who is a third party should not suffer and they must enjoy the fruits of the award passed by the Tribunal. In such circumstances, the Insurance Company must be directed to pay the compensation to the claimants at the first instance and recover the same from the owner of the vehicle. By applying the said principle of law to the present case, the portion of the award dismissing the claim petition as against the 2nd respondent/Insurance Company, on the ground that the driver of the lorry belonging to the 1st respondent did not possess driving licence, is set aside and the 2nd respondent/Insurance Company is directed to pay the compensation to the appellants at the first instance and later on, recover the same from the 1st respondent, owner of the vehicle.

9. As far as quantum of compensation is concerned, from the materials available on record, it is seen that the appellants have contended that the deceased was working as a Salesman in TASMAC shop and was earning a sum of Rs.10,000/- per month. The appellants have marked Ex.P6/Identity card issued by the TASMAC shop to prove his avocation. But the appellants have not let in any evidence to prove the income of the deceased. In the absence of any material evidence to prove the income of the deceased, the Tribunal has fixed a sum of Rs.6,000/- per month as notional income of the deceased. The accident is of the year 2011 and the notional income fixed by the Tribunal is meagre. Hence, a sum of Rs.9,000/- per month is fixed as notional income of the deceased. As per Ex.P5/Transfer Certificate, the deceased was

aged 33 years at the time of accident. The Tribunal has applied multiplier '17', which is incorrect and the correct multiplier is '16'. The Tribunal has not granted any enhancement towards future prospects. The appellants are entitled to 40% enhancement towards future prospects. There are four dependants of the deceased. The Tribunal has deducted 1/3rd towards personal expenses, which is not correct and 1/4th has to be deducted towards personal expenses. Thus, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.18,14,400/- (Rs.9,000/- + 3600 [Rs.9,000/- X 40%] X 12 X 16 X 3/4). A sum of Rs.10,000/- each awarded by the Tribunal towards loss of consortium to the 1st appellant and funeral expenses are meagre and the same are hereby enhanced to Rs.40,000/- and Rs.15,000/- respectively. The Tribunal has not awarded any amount towards loss of estate and this Court awards a sum of Rs.15,000/- towards loss of estate. A sum of Rs.40,000/- awarded by the Tribunal towards loss of love and affection is just and reasonable and hence, the same is hereby confirmed.

10.It is well settled that the Tribunal and the Courts have to award just compensation. Though the claimants have claimed lesser compensation, the Courts have power to grant just compensation, more than the amount claimed by the claimants. 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 or reduced
1.	Loss of dependency	8,16,000	18,14,400	Enhanced
2.	Loss of love and affection	40,000	40,000	Confirmed
3.	Funeral expenses	10,000	15,000	Enhanced
4.	Loss of consortium	10,000	40,000	Enhanced
5.	Loss of estate	-	15,000	Granted
	Total	Rs.8,76,000/-	Rs.19,24,400/-	Enhanced by Rs.10,48,400/-

11.In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at

Rs.8,76,000/- is hereby enhanced to Rs.19,24,400/- 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 1st appellant being the wife of the deceased is entitled to a sum of Rs.6,62,100/-, the appellants 2 and 3 being children of the deceased are entitled to a sum of Rs.4,62,100/- each and the 4th appellant being the mother of the deceased is entitled to a sum of Rs.3,38,100/- as compensation. The 2nd respondent/Insurance Company is directed to deposit the enhanced award amount now determined by this Court along with interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment, at the first instance and recover the same from the 1st respondent/owner of the vehicle. On such deposit, the appellants 1 and 4/claimants 1 and 4 are permitted to withdraw their respective share of the award amount now determined by this Court along with proportionate interest and costs, less the amount if any, already withdrawn. The shares of the minor appellants 2 & 3 are directed to be deposited in any one of the Nationalised Banks till the minors attain majority. The 1st appellant being the mother of the appellants 2 & 3/minors is permitted to withdraw the accrued interest once in three months for the welfare of the minors. No costs.

Sd/-

Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

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To

1.The Principal District Judge
The Motor Accident Claims Tribunal
Namakkal.

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

+1cc to Mr.MA.P.Thangavel, Advocate SR.No.1094

+1cc to Mr.T.Ravichandran, Advocate SR.No.754

C.M.A.No.1402 of 2015

SSD(CO)
GMY(15/09/2020)