

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.276 of 2020

1.S.Nisha

2.Minor S.Jeevan

3.Minor S.Jeeva

4.K.Pichakaran

5.Nagakannai ... Appellants/Petitioners
(Minor appellants rep. by mother guardian,
next friend S.Nisha, the 1st appellant herein)

Vs.

1.V.Sahayanathan Victor

2.United India Insurance Co. Ltd.,
Third Party Service Hub,
Plot No.35, 36, 37 AR Plaza,
45 Feet Road, Balaji Nagar Extension,
Saram, Puducherry. ... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 26.08.2019 made in M.C.O.P.No.2314 of 2017 on the file of the Motor Accident Claims Tribunal, I Additional Sub Court, Cuddalore.

For Appellants : Ms.Ramya V.Rao
For R2 : Mr.J.Chandran
R1 : Exparte Before Tribunal

J U D G M E N T

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 26.08.2019 made in M.C.O.P.No.2314 of 2017 on the file of the Motor Accident Claims Tribunal, I Additional Sub Court, Cuddalore.

2.The appellants are claimants in M.C.O.P.No.2314 of 2017 on the file of the Motor Accident Claims Tribunal, I Additional Sub Court, Cuddalore. The appellants filed the said claim petition claiming a sum of Rs.25,00,000/- as compensation for the death of one Sampathkumar, who died in the accident that took place on 27.04.2017.

3.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 1st respondent and directed the 2nd respondent/Insurance Company to pay a sum of Rs.13,80,400/- as compensation to the appellants.

4.Not being satisfied with the quantum of compensation awarded by the Tribunal, the appellants have come out with the present appeal seeking enhancement of compensation.

5.The learned counsel appearing for the appellants contended that the deceased was aged 31 years at the time of accident and marked Ex.P8/salary certificate issued by employer wherein it is stated that the deceased was working as a Contract Labour in Thermal Power Station-I and a sum of Rs.13,000/- per month was paid to him. The Tribunal without considering the same has fixed only a meagre sum of Rs.6,500/- per month as notional income of the deceased. The Tribunal has not awarded any compensation towards loss of love and affection to the minor children aged 10 years each and parents of the deceased. 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 Tribunal after considering the materials available on record, 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.It is the contention of the appellants that the deceased was aged 31 years at the time of accident and was earning a sum of Rs.13,000/- per month by working as a Contract Labour Mine-I, (Incoserve) N.L.C., Neyveli. The appellants have produced Ex.P8/copy of the salary certificate, wherein it was mentioned that the deceased was paid a sum of Rs.13,000/- per month as

salary. The Tribunal did not accept the same, on the ground the author of document was not examined. In such circumstances, the Tribunal fixed notional income of the deceased at Rs.6,500/- per month. The accident is of the year 2017, the notional income fixed by the Tribunal is meagre and therefore a sum of Rs.12,000/- per month is fixed as notional income of the deceased. The deceased was aged 31 years at the time of the accident. The Tribunal has granted 40% enhancement towards future prospects, which is proper. Applying multiplier 16 and after deducting $1/4^{\text{th}}$ towards personal expenses of the deceased, the amount awarded by the Tribunal towards loss of income is enhanced to Rs.24,19,200/- $[(Rs.12,000/- + 4,800 (Rs.12,000/- \times 40\%) \times 12 \times 16 \times 3/4)]$. The Tribunal has not awarded any compensation towards loss of love and affection. Hence this Court is of the view, that a sum of Rs.10,000/- each to the appellants 2 to 5 may be granted under the said head to meet ends of justice. Accordingly, a sum of Rs.40,000/- is awarded under the head loss of love and affection to be shared equally by the appellants 2 to 5. The amounts awarded by the Tribunal under other heads are just and reasonable and hence the same are hereby confirmed.

9.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
1.	Loss of income	13,10,400	24,19,200	Enhanced
2.	Loss of estate	15,000	15,000	Confirmed
3.	Loss of consortium	40,000	40,000	Confirmed
4.	Funeral expenses	15,000	15,000	Confirmed

5.	Loss of love and affection (Rs.10,000/- each to the appellants 2 to 5)	-	40,000	Granted
	Total	Rs.13,80,400/-	Rs.25,29,200/-	Enhanced by Rs.11,48,800/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.13,80,400/- is hereby enhanced to Rs.25,29,200/- 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 necessary Court fee, if any, on the enhanced compensation. 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. On such deposit, the appellants 1, 4 & 5 are permitted to withdraw their respective share of the enhanced award amount on the basis of apportionment fixed by the Tribunal along with proportionate interest and costs, less the amount if any, already withdrawn by filing necessary applications before the Tribunal. The share of the minor appellants 2 & 3 are directed to be deposited in any one of the Nationalised Bank till they attain majority. The 1st appellant being the mother of the appellants 2 & 3 is permitted to withdraw the accrued interest once in three months for the welfare of the minor. No costs.

Sd/-

सत्यमेव जयते
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1.The I Additional Subordinate Judge,
Motor Accidents Claims Tribunal,
Cuddalore.

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

+2 cc's to Mr.A.N.Viswanatha Rao, Advocate,sr.9801

+1 cc to Mr.J.Chandran, Advocate,sr.9978.

Mr(co)
krd 28/08

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