

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.02.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.NO.2510 OF 2012

- 1.Saraswathi
- 2.Minor Deenadhayalan (Major)
- 3.Minor Nivetha (Major)
(Minors Rep. by their next
friend, Mother Saraswathi)
- 4.Nallammal .. Appellants

Appellants 2 and 3 declared as majors and their mother, friend Saraswathi (first appellant) discharged from guardianship vide Court order dated 05.02.2020 made in C.M.P.No.10773/2016 in C.M.A.No.2510 of 2012 (VBSJ)

Vs.

- 1.A.Jayabalan
- 2.Prabavathi
- 3.ICICI Lombard General Insurance Company Limited,
Having Office at J.B.Tower,
No.256/258-B, 1st floor,
Sathy Road, Erode. .. Respondents

(Notice to R-1 may be dispensed with.
As he remained ex-parte before the Tribunal)

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 18.04.2012 made in M.C.O.P.No.648 of 2009 on the file of Motor Accident Claims Tribunal, Principal District Court, Erode.

For Appellant : Mr.S.Kaithamalai Kumaran

For Respondents : R1 - Ex parte
: R2 - No appearance
: R3 - Mrs.R.Sreevidhya

J U D G M E N T

The Civil Miscellaneous Appeal is filed by the appellant/claimant seeking enhancement of compensation granted by the Tribunal in the award dated 18.04.2012 made in M.C.O.P.No.648 of 2009 on the file of Motor Accident Claims Tribunal, Principal District Court, Erode.

2.The appellants are the claimants in M.C.O.P.No.648 of 2009 on the file of Motor Accident Claims Tribunal, Principal District Court, Erode. They have filed the said claim petition claiming a sum of Rs.10,00,000/-as compensation for the death of one Devarajan in the accident that took place on 17.05.2009.

3.The case of the appellants is that on 17.05.2009, at about 10.30 AM., the deceased Devarajan was standing in front of Chettipalayathar fertilizer shop, near Bull Statue, Erode. At that time, the first respondent drove the bus bearing registration No.TN-33-AJ-2939 from west to east in a rash and negligent manner and hit against the deceased. The deceased was taken to Government Hospital, Erode. But, he died on the way to hospital due to the injuries sustained. The accident occurred only due to the rash and negligent driving of the first respondent.

4.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving by the driver of the bus belonging to the first respondent and directed the third respondent to pay a sum of Rs.6,03,200/- as compensation to the appellants. Not being satisfied with the amount awarded by the Tribunal, the appellants have come out with the present appeal seeking enhancement of compensation.

5.Heard Mr.S.Kaithamalai Kumaran, learned counsel appearing for the appellants/claimants and Mrs.R.Sreevidhya learned counsel appearing for the third respondent and perused the materials available on record.

6.From the materials available on record, it is seen that the appellants have contended that the deceased was working as NMR in TWAD and earning a sum of Rs.15,000/- per month. The appellants have not filed any documents to prove their contention. In any event, the deceased was 43 years at the time of accident. The appellants are the wife, children and mother of the deceased. Therefore, the deceased who would have worked even as a coolie and have earned at least Rs.200/- per day for maintenance and deducting a sum of Rs.50/- for his personal and living expenses, the remaining amount of Rs.150/- will be the loss of income to the appellants. Hence, the Tribunal has

awarded a sum of Rs.5,38,200/- (Rs.3,450/- X 12 X 13), towards "Loss of earning" which is very meager and the same is hereby enhanced to Rs.7,14,000/- (Rs.4,250/- X 12 X 14). The Tribunal has awarded a sum of Rs.25,000/- towards "loss of consortium". The first appellant has lost her life companion in the unfortunate accident and hence, a sum of Rs.40,000/- is awarded towards the same. The Tribunal has awarded a sum of Rs.30,000/- towards "Loss of love and affection". This Court feels that the same is very meager and taking into consideration the livelihood of the children, the same is enhanced to Rs.40,000/-. The Tribunal has awarded a sum of Rs.5,000/- each towards "Transportation" and "Funeral Expenses", which is meager and the same is hereby enhanced to Rs.10,000/- each. The amounts awarded by the Tribunal under all other heads are just 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	5,38,200/-	7,14,000/-	Enhanced
2.	Loss of consortium to the 1 st appellant	25,000/-	40,000/-	enhanced
3.	Loss of love and affection	30,000/-	40,000/-	enhanced
4.	Funeral expenses	5,000/-	10,000/-	enhanced
5.	Transportation	5,000/-	10,000/-	enhanced
	Total	Rs.6,03,200/-	Rs.8,14,000/-	Enhanced by Rs.2,10,800/-

7. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.6,03,200/- is hereby enhanced to Rs.8,14,000/- 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 third respondent, on behalf of the first and second respondents, is directed to deposit the award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of twelve

weeks from the date of receipt of a copy of this judgment. On such deposit, appellants 1 & 4 are permitted to withdraw their respective share of the award amount, along with proportionate interest and costs, less the amount, if any, already withdrawn. The share of the minors/appellants 2 and 3 are directed to be deposited in any one of the Nationalised Bank till the minors 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 minors. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

sbn

To

1. The Motor Accidents Claims Tribunal,
Principal District Court, Erode.
2. The Section Officer,
V.R Section, High Court,
Madras.

+1cc to Mr.S.Kaithamalai Kumaran, Advocate, S.R.No.13519

+1cc to Mrs.R.Sreevidhya, Advocate, S.R.No.14146

C.M.A.No.2510 of 2012

MG(CO)
CS/06/01/2021

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