

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2330 of 2013

1.M.Alamelu

2.S.Mukilan (Minor)

3.S.Poongulali (Minor)

4.S.Krithiga (Minor)

5.T.Manicka Samy ... Appellants/Petitioners
(Minors 2 to 4 represented by their
grand mother and next friend M.Alamelu)

Vs.

1.G.Sivakumar(set exparte before the Tribunal)

2.United India Insurance Co. Ltd.,
No.134, Greams Road,
Slingi Building, 4th Floor,
Thousand Lights,
Chennai - 600 006. ... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 07.08.2012 made in M.C.O.P.No.3346 of 2009 on the file of Motor Accident Claims Tribunal, XV Additional Judge, City Civil Court, Chennai.

For Appellants : Mr.N.M.Elumalai

For R2 : Mr.M.Krishnamoorthy

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 07.08.2012 made in M.C.O.P.No.3346 of 2009 on the file of Motor Accident Claims Tribunal, XV Additional Judge, City Civil Court, Chennai.

2.The appellants are claimants in M.C.O.P.No.3346 of 2009 on the file of Motor Accident Claims Tribunal, XV Additional City Civil Court, Chennai. They filed the said claim petition claiming a sum of Rs.10,00,000/- as compensation for the death of one Lakshmi Kumari, who died in the accident that took place on 24.01.2009.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent riding by the rider cum owner of the motorcycle belonging to the 1st respondent and directed the respondents to jointly and severally, pay a sum of Rs.7,17,000/- 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 at the time of accident the deceased was earning a sum of Rs.6,000/- per month by running provision store and cool bar. The Tribunal fixed a meagre sum of Rs.4,500/- per month as notional income of the deceased and deducted 1/3rd towards personal expenses. The deceased was aged 33 years at the time of the accident. The Tribunal has not awarded any enhancement towards future prospects and any amount towards loss of estate and therefore, prayed for enhancement of compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the Tribunal after considering all the materials available on record, has awarded just compensation, which is not meagre. 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 at the time of accident the deceased was earning a sum of Rs.6,000/- per month by running provision store and cool bar. The 1st appellant examined herself as P.W.1 and marked Rental Agreements as Ex.P8 and Ex.P9 to prove the avocation of the deceased. The Rental Agreements are not in the name of the deceased Lakshmi Kumari but it was in the name of the husband of the deceased. Considering the above facts, the Tribunal fixed a sum of

Rs.4,500/- per month as notional income of the deceased. The notional income fixed by the Tribunal is meagre. The accident is of the year 2009 and a sum of Rs.5,000/- per month is fixed as notional income of the deceased. The Tribunal considering Ex.P6/postmortem certificate, fixed age of the deceased as 33 years at the time of accident. The Tribunal has not awarded any enhancement towards future prospects. The appellants are entitled to 40% enhancement towards future prospects. As per judgment of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC Supreme Court (Sarla Verma vs. Delhi Transport Corporation), the multiplier applicable for the age group 31 to 35 is '16' but the Tribunal erroneously applied multiplier 17. The Tribunal deducted 1/3rd towards personal expenses of the deceased, which is not proper. Since, there are five dependents, 1/4th has to be deducted towards personal expenses of the deceased. In view of the same, the amount awarded by the Tribunal towards loss of income is modified to Rs.10,08,000/- {(Rs.5,000/- + 2,000 (Rs.5,000/- of 40%) x 12 x 16 x 3/4)}. The amount awarded by the Tribunal towards funeral expenses is meagre and hence the same is hereby enhanced to Rs.15,000/-. The Tribunal not awarded any amount towards loss of estate. A sum of Rs.15,000/- is awarded towards loss of estate. The amounts awarded by the Tribunal towards loss of love & affection is just and reasonable and hence the same is 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 or reduced
1.	Loss of income	6,12,000	10,08,000	Enhanced
2.	Loss of love and affection	1,00,000	1,00,000	Confirmed
3.	Funeral expenses	5,000	15,000	Enhanced
4.	Loss of estate	-	15,000	Granted
	Total	Rs.7,17,000/-	Rs.11,38,000/-	Enhanced by Rs.4,21,000/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.7,17,000/- is hereby enhanced to Rs.11,38,000/- 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 necessary Court fee, if any, on the enhanced compensation. The respondents are jointly and severally, 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 & 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 to 4 are directed to be deposited in any one of the Nationalised Bank till they attain majority. The 1st appellant being the grand mother of the appellants 2 to 4 is permitted to withdraw the accrued interest once in three months for the welfare of the minors. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The XV Additional Judge,
The Motor Accident Claims Tribunal,
City Civil Court,
Chennai.

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

+1 CC to Mr.M.Krishnamoorthy, Advocate sr 21720.

C.M.A.No.2330 of 2013

PP(CO)
SP(02/12/2020)