



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2020

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

C.M.A.No.3108 of 2019

1. Varadhammal
2. Srinivasan
Both are residing at
No.7, Thulukanathamman Koil Street,
Ninnakarai, Indira Nagar,
Kattankulathur,
Kanchipuram District.

... Appellants/Clalimants

Vs.

1. Jagadeeshwaran,
S/o. Govindasamy,
No.53, Chetti Street,
Uthukottai Peruratchi,
Uthukottai,
Tiruvallur District.

2. Reliance General Insurance Co., Ltd.,
Legal department,
Reliance House, 6th Floor,
No.6, Haddows Road,
Nungambakkam,
Chennai-6.

... Respondents/Respondents

PRAYER:- Civil Miscellaneous Appeal preferred under Section 173 of Motor Vehicles Act against the judgment and decree in M.C.O.P. No.3384 of 2015, dated 06.07.2018 on the file of the Special Sub-Court No.2, Motor Accident Claims Tribunal, Small Causes Court, Chennai.

For Appellants : Mr.F.Terry Chella Raja

For Respondents: R1 - exparte

Mr.S.Arunkumar
for R2



J U D G M E N T

The claimants, not being satisfied with the quantum of compensation awarded by the Motor Accidents Claims Tribunal/Small Causes Court, Chennai, in MCOP No.3384 of 2015, filed the present Civil Miscellaneous Appeal before this Court.

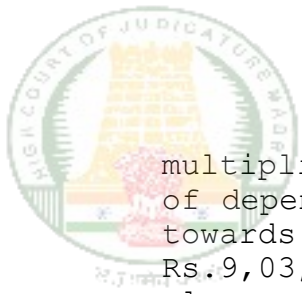
2. The brief facts leading to filing this Civil Miscellaneous Appeal is as follows :

The claimants are the parents of deceased, one Pappaiya. On 01.02.2015 at about 09.00 p.m., when the deceased was riding the motorcycle bearing Regn. No.TN-21-AW-0042, proceeding at G.S.T. Road, near Kattankulathur B.D.O. office, in Kanchipuram District, a Qualis car bearing Regn. No.TN-09-AC-5205, owned by the 1st respondent, driven by its driver came in a rash and negligent manner and dashed against the two wheeler, in which the deceased sustained grievous injuries and he was admitted in S.R.M. Medical College Hospital, Potheri, subsequently, died on 05.02.2015. In the claim petition, it has been stated that at the time of accident, the deceased was 34 years, he was a bachelor, running a cool drinks stall, also supplied drinking water, and earning a sum of Rs.800/- per day. He was the sole bread-winner of the family. Hence, the appellants have filed the claim petition seeking compensation of Rs.25 lakhs.

3. The 1st respondent/owner of the vehicle was set exparte and the second respondent Insurance Company contested the claim petition stating that the accident has been taken place only due to the rash and negligent driving of the deceased and the insurance company is not liable to pay any compensation. That apart, the insurance company also disputed the monthly income of the deceased and stated that the claim is highly excessive.

4. In order to prove their claim, the Appellants/claimants examined the 1st appellant as P.W.1 and an eye-witness to the occurrence was examined as P.W.2 and marked as many as 12 exhibits. On the side of the respondents, no witness was examined and no document was marked.

5. The Tribunal, after considering both the oral and documentary evidence, has come to the conclusion that the accident was taken place due to the rash and negligent driving of the car belong to the 1st respondent. Hence, the respondents are liable to pay the compensation. So far as the quantum of compensation is concerned, the Tribunal had fixed the notional monthly income of the deceased as Rs.6500/-. So far as the future prospects is concerned, the Tribunal had fixed 40% towards future prospects. After deducting 50% of monthly income towards personal expenses, the Tribunal had arrived the notional income of deceased as Rs.54,600/- per annum, applied the



multiplier of 16 and awarded a sum of Rs.8,73,600/- towards loss of dependency. That apart, a sum of Rs.15,000/- each was awarded towards loss of estate and funeral expenses. Totally, a sum of Rs.9,03,600/- has been awarded by the Tribunal, which is payable along with interest at the rate of 7.5%. Not being satisfied with the same, the claimants have filed this Civil Miscellaneous Appeal before this Court.

6. The learned counsel appearing for appellants would submit that son of appellants was running a cool drinks stall, that apart, he is supplying drinking water to various houses, thereby he was earning a sum of Rs.800/- per day and his monthly notional income will be Rs.24,000/-. Whereas, the Tribunal has taken only a sum of Rs.6500/- as notional monthly income without any basis whatsoever. That apart, the claimants being parents of deceased, they have lost their only son, they are entitled for compensation towards love and affection. Whereas, the Tribunal has failed to give any amount towards love and affection.

7. On the other hand, the learned counsel appearing for insurance company has vehemently contended that the deceased said to have running a petty shop, absolutely there is no evidence for the same. Hence, the Tribunal has rightly fixed the notional monthly income of the deceased as Rs.6500/- and there is no infirmity in it. That apart, the learned counsel also submitted that that the claimants are parents of deceased and the deceased was a bachelor. Considering all those circumstances, the Tribunal has awarded a fair compensation, the same need not be interfered with.

8. I have considered rival submissions and perused the materials available on records.

9. From the materials available on record, it could be seen that the claimants are parents of deceased, and he was a bachelor at the time of accident and aged about 35 years. So far as monthly income of deceased is concerned, it is stated that he was running a petty shop selling cool drinks and also supplying drinking water as per the evidence of mother of deceased. We cannot expect any documentary evidence to support the same, and there is no contra evidence to dispute the same. Considering the same, it can be presumed that he would have earned atleast a sum of Rs.8000/- per month. The Tribunal without any basis, has fixed the notional monthly income of deceased as Rs.6500/-. Hence, the loss of dependency will be Rs.10,75,200/-.

10. So far as the other heads are concerned viz., future prospects, deduction of personal expenses, the Tribunal has rightly taken at 40% of his monthly income towards future prospects and deducted 50% towards personal expenses. However,



the compensation was not awarded towards loss of love and affection. As the appellants are parents of deceased, they have lost their only son. Hence, they are entitled to get a compensation of Rs.80,000/- towards loss of love and affection, as per the judgment of Hon'ble Supreme Court of India, in the case of National Insurance CO.Ltd., /vs/ Pranay Sethi and others reported in 2017 (16) SCC 680. In the said circumstances, the award passed by the Tribunal is modified as follows :-

Sl. No.	Headings	Amount Awarded by the Tribunal Rs.	Amount awarded by this Court	Award confirmed or enhanced
1	Loss of dependency	8,73,600	10,75,200	enhanced
2	Loss of Estate	15,000	15,000	confirmed
3	Funeral expenses	15,000	15,000	confirmed
4	Love and affection	Nil	80,000	granted
	Total	9,03,600	11,85,200	enhanced

Thus, the appellants are entitled to get a sum of Rs.11,85,200/- instead of Rs.9,03,600/- as awarded by the Tribunal.

11. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.9,03,600/- is hereby enhanced to Rs.11,85,200/- 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, 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 are entitled to share the amount proportionately as ordered by the Tribunal and the appellants are permitted to withdraw the enhanced award amount along with interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

rpp



To
The Motor Accidents Claims Tribunal,
Special Sub Court No.2
Small Causes Court, Chennai.

Copy to:

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

+1cc to M/s.M.Malar, Advocate SR.No. 35174

+1cc to Mr.S.Arunkumar, Advocate SR.No. 35499

C.M.A.No.3108 of 2019

SS(CO)

B.VC(13.08.2021)