

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No. 297 of 2020

1.Uma Madhavan
2.Madhavan

.. Appellants/Claimants

1.G.Gunasekaran
Vs.

2.IFFCO-TOKIO General Insurance Co., Ltd.,
Iffco Bhavan, 4th Floor, No.128, Habibullah Road,
T.Nagar, Chennai - 600 017. .. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 06.11.2019 made in M.C.O.P. No. 3436 of 2018 on the file of Motor Accident Claims Tribunal, Chief Judge Small Causes Court, Chennai.

For Appellants : Mr.R.Nalliyappan
For R2 : Mr.J.Michael Visuvasam
R1 : Exparte

J U D G M E N T

The Civil Miscellaneous Appeal is filed by the appellants seeking enhancement of compensation granted by the Tribunal in the award dated 06.11.2019 made in M.C.O.P. No. 3436 of 2018 on the file of Motor Accident Claims Tribunal, Chief Small Causes Court, Chennai.

2.The appellants are claimants in M.C.O.P. No. 3436 of 2018 on the file of Motor Accident Claims Tribunal, Chief Small Causes Court, Chennai. The appellants filed the said claim petition claiming a sum of Rs.50,00,000/- as compensation for the death of their son viz., Aniruth, who died in the accident that took place on 13.04.2018.

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 2nd respondent/Insurance Company being insurer of the said lorry, to pay a sum of Rs.15,67,000/- 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 the deceased was aged 19 years at the time of accident and was studying 2nd year B.Tech in SRM University, Chennai. The deceased was a meritorious student. The appellants proved the same by marking Ex.P9 to Ex.P11. The notional income fixed by the Tribunal is meagre. The Tribunal has not awarded any amount towards transport expenses and loss of estate. 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 deceased was a student, non-earning member. The appellants have failed to prove that the deceased was meritorious student and would have got salary more than Rs.10,000/- per month. The notional income fixed by the Tribunal 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 the deceased was studying 2nd year B.Tech in SRM University, Chennai at the time of accident. The appellants have produced Ex.P9/Copy of Secondary Education Examination Certificate and Ex.P11/Copy of B.Tech degree grade card of the deceased. The appellants have not produced any other certificates to show that the deceased was meritorious student and participated in various activities. In the judgment reported in "2018 (2) TN MAC 81 (DB) in Balamanothari Vs. Sri.Venkateswara College of Engineering", it has been held as follows:

"42. The learned counsel appearing for the claimants would contend that the deceased was 20 years at the time of accident. He was a student pursuing his III year Engineering Degree. On the fateful day on 9.3.2006, while the deceased was returning home, he was hit by the offending Bus,

which was owned by the First Respondent and is in possession and control of the second respondent. The Tribunal, on analyzing the oral and documentary evidence, rendered a specific finding that due to the rash and negligent driving of the driver of the bus, the accident had occurred. This finding of the Tribunal has reached a finality as it was not assailed by any of the respondents.

43. For the purpose of determining the quantum of compensation payable to the claimants, the Tribunal fixed the notional income of the deceased at Rs.20,000/- per month, deducted 50% thereof towards personal expenses and applied multiplier '14' to arrive at a sum of Rs.16,80,000/- towards loss of income of the deceased. At the same time, the Tribunal has awarded a sum of Rs.10,000/- each to the claimants towards loss of love and affection, Rs.10,000/- towards funeral expenses to make the total compensation at Rs.17,10,000/- which according to the counsel for the claimants is meagre and it is liable to be enhanced by this Court. It is further contended on behalf of the claimants that the Tribunal erred in adopting multiplier '14' on the basis of age of the mother of the deceased.

44. The main contention urged on behalf of the claimants is that the deceased was a young, vibrant and bright student and even during the course of his studies, he was offered employment in an United States based company namely M/s. Butler International with an Annual Salary of 96,000 US Dollars. In order to fortify this submission, the claimants have marked Ex.P17, Visa issued to the deceased, Ex.P20, Job Offer Letter issued by M/s. Butler International. Apart from these documents, the passport of the deceased was marked as Ex.P18, the testimonials of the deceased were also marked as Exs.P13 & P14. On the basis of these documentary evidence, it is contended that the Tribunal failed to award reasonable and fair compensation to the claimants. It was also urged before us that the Tribunal, while determining the compensation amount, erred in taking the age of the mother of the deceased instead of taking the age of the deceased".

The Division Bench of this Court considering the documents filed in the instant case, fixed the monthly income of the deceased at Rs.20,000/-.

9. In another appeal, the Division Bench of this Court in the judgment reported in 2018 (2) TN MAC 308 (DB) [Oriental Insurance Company Limited Vs. Sushma Jitaraja and others] held that the deceased participated in various activities and the claimants therein produced Ex.P20 to Ex.P46 to show that the deceased was meritorious student. The Division Bench of this Court considering the documents filed by the claimants, fixed monthly income at Rs.36,000/- and granted compensation. Considering the above two judgments and certificates produced by the appellants, this Court is inclined to fix notional income of the deceased at Rs.15,000/- per month instead of Rs.10,000/- per month fixed by the Tribunal. The deceased was aged 19 years at the time of accident. The Tribunal has awarded 40% enhancement towards future prospects which is proper. Since the deceased was a Bachelor aged 19 years at the time of accident, the Tribunal applied the multiplier '18' and deducted 1/2 towards personal expenses of the deceased. In view of the same, the amount awarded by the Tribunal towards loss of dependency is enhanced to Rs.22,68,000/- [(Rs.15,000/- + 6,000 (Rs.15,000/ x 40%) x 12 x 18 x 1/2)]. The amounts awarded by the Tribunal towards loss of love & affection is meagre. The appellants who have lost their son at his young age are entitled to a sum of Rs.40,000/- each towards loss of love & affection. The Tribunal has not granted any amounts towards loss of estate and transport expenses. A sum of Rs.15,000/- and Rs.10,000/- are granted towards loss of estate and transport expenses. The amount awarded by the Tribunal towards funeral expenses is just and reasonable and hence, the same is 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 dependency	15,12,000	22,68,000	Enhanced
2.	Loss of love & affection	40,000	80,000	Enhanced
3.	Funeral expenses	15,000	15,000	Confirmed
4.	Loss of estate	-	15,000	Granted

5.	Transport expenses	-	10,000	Granted
	Total	Rs.15,67,000/-	Rs.23,88,000/-	Enhanced by Rs.8,21,000/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.15,67,000/- is hereby enhanced to Rs.23,88,000/- 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 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 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. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

mtl

To

1. The Chief Judge,
The Motor Accident Claims Tribunal,
Small Causes Court,
Chennai.

Copy to

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

+1 Cc to Mr.R.Nalliyappan, Advocate sr 15533.

+1 CC to Mr.J.Michael Visuvasam, Advocate sr 15729.

C.M.A. No. 297 of 2020

SV(CO)

SP(21/12/2020)